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PORT OF SAN FRANCISCO

Agenda

# NOTICE OF CANCELLED MEETING

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The following Regular Port Commission Meeting has been cancelled:

**DECEMBER 9, 2003 @ 3 P.M.**

**A SPECIAL PORT COMMISSION MEETING IS SCHEDULED ON:**

**DECEMBER 16, 2003 @ 3 P.M.**

**in the Port Commission Hearing Room**
**Second Floor, Ferry Building**

San Francisco Port Commission
Pier 1, San Francisco, CA 94111
(415) 274-0406

# ACCESSIBLE MEETING INFORMATION

**Ferry Building:** The Port Commission Hearing Room is located on the second floor of the Ferry Building. The main public entrance is from the west (Embarcadero) side and is served by a bank of elevators adjacent to the historic staircase. Accessible public restrooms are on the first floor at the northeast end of the building as well as on the second floor across the lobby from the Port Commission Hearing Room. The main path of travel to the Port Commission Hearing Room is equipped with remote infrared signage (Talking Signs). The Port Commission Hearing Room is wheelchair accessible. Accessible seating for persons with disabilities (including those using wheelchairs) is available. The closest accessible BART and MUNI Metro station is Embarcadero located at Market & Spear Streets. Accessible MUNI lines serving the Ferry Building area are the F-Line, 9, 31, 32 and 71. For more information about MUNI accessible services, call (415) 923-6142.

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C) Hourly and valet parking in the Pier 3 lot. This lot is accessed through the Pier 3 bulkhead building entrance on the east side of the Embarcadero. This lot is located on the pier deck; adjacent to the ferry boat Santa Rosa.

Additional covered accessible off-street pay parking is available in the Golden Gateway Garage, which is bounded by Washington, Clay, Drumm and Battery Streets. Entrance is on Clay St. between Battery and Front Streets. There is no high-top van parking. Metered street parking is available on the Embarcadero, Washington St., Folsom St. and Drumm St.

**Pier 1:**

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In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals. A sign language interpreter and alternative format copies of meeting agendas and other materials can be provided upon request made at least 72 hours in advance of any scheduled meeting. Contact John Scott, Port's ADA Coordinator, at 274-0571. The Port's TTY number is (415) 274-0587.

**Know Your Rights Under the Sunshine Ordinance**. Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact Donna Hall by mail: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102, by phone at (415) 554-7724, by fax at (415) 554-7854 or by email at Donna.Hall@sfgov.org. Citizens may obtain a free copy of the Sunshine Ordinance by contacting Ms. Hall or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, at http://www.sfgov.org/sunshine.htm

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# SAN FRANCISCO
# PORT COMMISSION

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**SPECIAL MEETING**
**3:00 P.M., TUESDAY, DECEMBER 16, 2003**
**PORT COMMISSION HEARING ROOM, 2ND FLOOR**
**FERRY BUILDING, SAN FRANCISCO, CA 94111**

***The Port Commission Agenda as well as Staff Reports/Explanatory Documents available to the public and provided to the Commission are posted on the Port's Website at www.sfport.com.***

## AGENDA

1. **ROLL CALL**

2. **APPROVAL OF MINUTES** - November 18, 2003 Meeting

3. **EXECUTIVE**

   A. Executive Director's Report
   - Acknowledgement for Mayor Willie L. Brown, Jr.
   - James R. Herman Cruise Terminal Groundbreaking Ceremony
   - Port Employees Annual Holiday Luncheon
   - Port Security Update

4. **CONSENT**

   A. Request for Port Commission Ratification of a Sublease Agreement between TJ of Nevada, LLC and DC Seafood Corporation at Pier 45, Shed D, Space D-7. (Resolution No. 03-75).

5. **PLANNING AND DEVELOPMENT**

   A. Request for approval of resolution dedicating Pier 14 Public Pier in honor of former Mayor Art Agnos. (Resolution No. 03-76)

6. **ENGINEERING & MAINTENANCE**

   A. Request for approval of contract modification to Contract No. 2679, "Downtown Ferry Terminal Public Pier" for an amount not-to-exceed $193,000. (Resolution No. 03-71)

   B. Request for adoption of the Port of San Francisco's Unreinforced Masonry Bearing Wall Building Seismic Mitigation Program. (Resolution No. 03-72)

7. **REAL ESTATE**

A. Request to authorize staff to issue a Request for Proposals (RFP) for the lease of the Roundhouse One Building located at the Embarcadero and Sansome Street. (Resolution No. 03-73)

B. Request for approval of 2003 Licensing Agreement for New Year's Eve. (Resolution No. 03-74)

8. **NEW BUSINESS/PUBLIC COMMENT**

Public comment is permitted on any matter within Port jurisdiction and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. A member of the public has up to three minutes to make pertinent public comments before action is taken on any agenda item and during the new business/public comment period. It is strongly recommended that public comments be submitted in writing so they can be distributed to the Commissioners for their review. Please fill out a speaker card and hand it to the Commission Secretary. If you have any question regarding the agenda, please contact the Commission Secretary at 274-0406.

9. **EXECUTIVE SESSION**

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

B. CLOSED SESSION

(1) CONFERENCE WITH LEGAL COUNSEL REGARDING ANTICIPATED LITIGATION MATTERS (Discussion Items)

a. Discuss significant exposure to litigation pursuant to subdivision (b) of California Government Code Section 54956.9 (2 cases) (1 case as Defendant) (1 case as Plaintiff)

(2) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.
***This session is closed to any non-City/Port representative. ****

a. Property: Pier 70
Person Negotiating: Port: Byron Rhett, Planning & Development Director
*Exploratorium: Dr. Goéry Delacôte, Executive Director

Under Negotiation: ___ Price ___Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 70.

2 50351 SFPL : ECONO JRS
45 SFPL 04/09/04 96

b. Property: Pier 27-31
Person Negotiating: Port: Byron Rhett, Planning & Development Director
*The Mills Corporation: Steven J. Jacobsen, Executive Vice President

Under Negotiation: ___ Price ___Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 27-31.

c. Property: Foreign Trade Zone Piers 19/23
Person Negotiating: Port: Peter Dailey, Maritime Director
*Big C Traders: Raymond Lynch

Under Negotiation: ___ Price ___Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 19/23.

d. Property: Piers 45C
Person Negotiating: Port: Peter Dailey, Maritime Director
*National Liberty Ship Memorial (Jeremiah O'Brien): Rex Clack

Under Negotiation: ___ Price ___Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 45C.

e. Property: Pier 92
Person Negotiating: Port: Ken Winters, Real Estate Director
*Specialty Crushing: Tom Chasm

Under Negotiation: ___ Price ___Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 92.

f. Property: Pier 48
Person Negotiating: Port: Ken Winters, Real Estate Director
*Prospective Bidder(s)

Under Negotiation: ___ Price ___Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding Request for Proposals for Port property located at Pier 48.

g. Property: Pier 45A
Person Negotiating: Port: Ken Winters, Real Estate Director
*San Francisco Museum and Historical Society: James Lazarus

Under Negotiation: ___ Price ___Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 45A.

h. Property: 286 Jefferson Street
Person Negotiating: Port: Ken Winters, Real Estate Director
*Castagnola's Restaurant: Kathy Higdon & Cindy Foxworth

Under Negotiation: ___ Price ___Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at 286 Jefferson Street.

i. Property: Seawall Lot 322I
Person Negotiating: Port: Ken Winters, Real Estate Director
*San Francisco Parking, Inc.: Timothy Leonadakis

Under Negotiation: ___ Price ___Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at SWL 322I.

j. Property: 498 Jefferson Street
Person Negotiating: Port: Ken Winters, Real Estate Director
*Franceschi's Restaurant: Paul Capurro

Under Negotiation: ___ Price ___Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at 498 Jefferson Street.

## 10. RECONVENE IN OPEN SESSION

A. Possible report on actions taken in closed session pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12.

B. Vote in open session on whether to disclose any or all executive session discussions pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12.

## 11. ADJOURNMENT

## DECEMBER 2003/JANUARY 2004
## CALENDAR OF UPCOMING PORT MEETINGS - OPEN TO THE PUBLIC

| Date | Time | Group | Location |
|---|---|---|---|
| **December 16** | **3:00 p.m.** | **Port Commission** | **Port Commission Room @ Ferry Building** |
| **January 13** | **3:00 p.m.** | **Port Commission** | **Port Commission Room @ Ferry Building** |
| **January 27** | **3:00 p.m.** | **Port Commission** | **Port Commission Room @ Ferry Building** |

**NOTES:**

The San Francisco Port Commission meets regularly on the 2nd and 4th Tuesday of the month at 3:00 p.m., unless otherwise noticed. ***The Commission Agenda and staff reports are posted on the Port's Website @ www.sfport.com.*** Contact Amy Quesada at 274-0406.

The Brannan Street Wharf Citizens Advisory Committee meets on an as-needed basis to develop a concept plan for this planned open space in the South Beach area. Meetings are held in the Bayside Conference Room at Pier 1. Contact Dan Hodapp @ 274-0625 or dan_hodapp@sfport.com

The Cruise Terminal Environmental Advisory Committee will meet the week of January 19th; date and time to be determined. (Regular schedule to be determined). Contact Michael Nerney at 274-0416.

The Environmental Quality Advisory Committee (EQAC) meets regularly on the fourth Thursday of the month at 9:00 a.m. at Scoma's Restaurant, Pier 47 @ Fisherman's Wharf. Contact Jay Ach @ 274-0562.

The Fisherman's Wharf Waterfront Advisory Group meets regularly on the 3rd Tuesday of the month. The regular meeting time and place is 9:00 a.m. at Scoma's Restaurant, Pier 47 at Fisherman's Wharf. Contact Kirk Bennett @ 274-0545.

The Maritime Commerce Advisory Committee (MCAC) meets on a bi-monthly basis, on the third Thursday of the month, from 11:30 a.m. to 1:30 p.m. @ Pier 1. Contact Jill Rodby @ 274-0519.

The Mission Bay CAC meets regularly on the 2nd Thursday of the month, from 5:30 to 7:30 p.m. at the Mission Bay Visitor Center (255 Channel Street). Contact Tiffany Bohee at 749-2481 for more information.

The Northeast Waterfront Advisory Group meets regularly on the 1st Wednesday of the month at 4:00 p.m. in the Bayside Conference Room @ Pier 1. Contact Kirk Bennett @ 274-0545.

The Pier 70 Advisory Group meets monthly on an as-needed basis generally on the 2nd Wednesday of the month from 4 to 6 p.m. at the Potrero Campus of the California College of Arts and Crafts, Board Room, 1111 – 8th Street between Irvin and Hooper. Contact Mark Paez @ 705-8674.

The Rincon Point-South Beach CAC meets regularly on the 3rd Monday of the month, from 5:00-7:00 p.m. at the South Beach Yacht Club (Pier 40 on The Embarcadero). Contact Tiffany Bohee at 749-2481 or 749-2400 for more information.

The Southern Waterfront Advisory Committee (SWAC) meets every 1st Wednesday of the month from 6:15 to 8:15 p.m. Location to be determined. Contact David Beaupre @ 274-0539 or david_beaupre@sfport.com.

The Waterfront Design Advisory Committee meets the 3rd Tuesday of the month from 11 a.m. to 1 p.m. in the Bayside Conference Room @ Pier 1. Contact Dan Hodapp @ 274-0625.

Port Website: Check out the Port's Website at www.sfport.com.

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PORT OF
SAN FRANCISCO

## MEMORANDUM

**December 11, 2003**

**TO:** MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Michela Alioto-Pier, Commissioner
Hon. Sue Bierman, Commissioner
Hon. Wilfred Hsu, Commissioner

**FROM:** Douglas F. Wong
Executive Director

**SUBJECT:** Request for Port Commission Ratification of a Sublease Agreement between TJ of Nevada, LLC and DC Seafood Corporation at Pier 45, Shed D, Space D-7

**DIRECTOR'S RECOMMENDATION:** APPROVE SUBLEASE AGREEMENT

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### ACTION REQUESTED:

Ratification of a Sublease Agreement between TJ of Nevada, LLC and DC Seafood Corporation for 4,092 square feet of shed space at Pier 45 Shed D, Space D-7.

### FACTS:

Paragraph 21, Assignment and Subletting, of the Commission-approved standard form Lease for Pier 45 Shed D, subsection 21.2 requires that "Tenant shall not make or permit any Transfer of this Lease except with the prior written consent of Port in each instance as evidenced by Port Commission resolution…". Tenant and the proposed subtenant are required to provide specific information to enable the Port to evaluate the proposed transfer and prospective subtenant or assignee, as well as any other information, documentation or evidence necessary for Port to evaluate the proposed transfer and prospective transferee.

In the proposed sublease referenced above, the requested information was submitted as required, reviewed by Port staff and the City Attorney's office consistent with lease requirements and Port standard practice. The lease requires Port Commission consent in the form of a Port Commission resolution.

### RECOMMENDATION

Real Estate staff recommends Port Commission ratification of the sublease agreement referenced above at Pier 45, Shed D, Space D-7.

Prepared by: Phil Williamson, Senior Property Manager

This Print Covers Calendar Item No. 4A

# PORT COMMISSION
# CITY AND COUNTY OF SAN FRANCISCO

## RESOLUTION NO. 03-75

WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco; and

WHEREAS, under Charter Section B3.581(g), leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, Port staff reviewed Lease No. L-12988 and the proposed sublease consistent with Section 21, Assignment and Subletting of the standard form lease requirements and recommended approval of the sublease; and

WHEREAS, The sublease agreement is approved as to form by the City Attorney's office; and

WHEREAS, The sublease is on file with the Port Commission Secretary; therefore, be it

RESOLVED, that the San Francisco Port Commission hereby ratifies approval by the Port Deputy Director of Real Estate the sublease consistent with the business terms set forth in the memorandum to the San Francisco Port Commission for Agenda Item 4A for the Port Commission meeting of December 16, 2003..

***I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of December 16, 2003.***

____________________________
Secretary

**Item 5A.** **Request for approval of resolution dedicating Pier 14 Public Pier in honor of former Mayor Art Agnos. (Resolution No. 03-76)**

This Print Covers Calendar Item No. 5A

PORT COMMISSION
CITY & COUNTY OF SAN FRANCISCO

RESOLUTION NO. 03-76

# RESOLUTION DEDICATING THE PIER 14 PUBLIC PIER IN HONOR OF MAYOR ART AGNOS FOR HIS SERVICE TO THE PEOPLE OF SAN FRANCISCO, HIS LEADERSHIP THAT MADE SAN FRANCISCO A BETTER CITY THAN HE FOUND IT, AND DEMOLISHING THE EMBARCADERO DOUBLE-DECKER FREEWAY THAT WALLED OFF SAN FRANCISCO FROM ITS BEAUTIFUL WATERFRONT

WHEREAS, A new pier for public use and enjoyment is being constructed to allow San Franciscans and visitors the opportunity to view San Francisco Bay and the City's waterfront from its vantage point; and

WHEREAS, the naming of this new Public Pier should honor the person whose leadership and commitment resulted in the return of the San Francisco waterfront after decades of being walled off from the City by a looming concrete double-decker freeway; and

WHEREAS, Art Agnos served the people of San Francisco with honor and distinction in a career that included being a social worker at the San Francisco Housing Authority, an elected California State Assemblymember representing San Francisco including its waterfront for ten years; and

WHEREAS, Art Agnos was elected as Mayor of San Francisco in December 1987, serving until January 1992 during a period of great challenges, including fiscal challenges from a national recession, war, drought and the 1989 Loma Prieta earthquake which was the most expensive natural disaster in United States history to that time and the most damaging to San Francisco since the Great Earthquake of 1906; and

WHEREAS, Mayor Art Agnos seized a magnificent opportunity to enhance San Francisco for all time by insisting that the Embarcadero Freeway be demolished rather than accept the view that the freeway be repaired and retrofitted, doing so with courage in the face of major political opposition, winning editorial support that "San Francisco has a once-in-a-lifetime opportunity – a chance to remove one of the worst blights on the fact of any American city," and making the Embarcadero one of the world's great waterfront boulevards; and

WHEREAS, Mayor Art Agnos successfully involved the City's leadership and the citizenry through the establishment of a Citizens Advisory Committee to support demolishing the freeway and creating what San Francisco Planning and Urban Research (SPUR) called "the legacy of a lifetime for San Francisco;" and

WHEREAS, Mayor Art Agnos personally began the demolition of the Embarcadero Freeway in order to "restore the smile to the beautiful face of San Francisco" making San Francisco the first city in the nation to demolish a freeway through its urban center; and

WHEREAS, Mayor Art Agnos' vision, leadership and commitment was a direct outgrowth of his commitment to "leave the city better than he found it" by committing his resources and office to solutions that would benefit the City of San Francisco for years to come; and

WHEREAS, the Embarcadero Roadway has become one of the world's great waterfront boulevards as had been hoped, opening the waterfront, uniting the City with its historic configuration, and providing a waterfront worthy of a great city; now, therefore, be it

RESOLVED, that the new Pier 14 Public Access Pier be dedicated in honor of Mayor Art Agnos for his service and vision to the people of San Francisco; and be it further

RESOLVED, that the day of its dedication shall be Art Agnos Day in San Francisco.

***I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of December 16, 2003.***

Secretary

PORT OF
SAN FRANCISCO

# MEMORANDUM

December 11, 2003

**TO:** MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Michela Alioto-Pier
Hon. Sue Bierman
Hon. Wilfred Hsu

**FROM:** Douglas F. Wong
Executive Director

**SUBJECT:** Contract modification to Contract No. 2679, "Downtown Ferry Terminal Public Pier" for an amount not-to-exceed $193,000.

**DIRECTOR'S RECOMMENDATION:** AUTHORIZE PORT STAFF TO EXECUTE A CONTRACT MODIFICATION TO CONTRACT No. 2679, "DOWNTOWN FERRY TERMINAL PUBLIC PIER," FOR AN AMOUNT NOT- TO- EXCEED $193,000.

**Background:**
On March 25, 2003, the San Francisco Port Commission authorized award of Contract No. 2679, “Downtown Ferry Terminal Public Pier,” to the lowest responsive responsible bidder, Dutra Construction Inc. for a total contract amount of $1,127,500. The Port issued a Notice to Proceed to Dutra Construction Inc. on May 8, 2003 and the base work was substantially complete on 12/1/03. This project is a part of Downtown Ferry Terminal project, in which the Port previously completed construction of a freestanding breakwater that protects the southern berths at the Downtown Ferry Terminal from winter storm surges. As a condition of the BCDC permit for the Downtown Ferry Terminal project; the Port was obligated to provide public access by finishing the top of breakwater with public pedestrian improvements and connecting it to Herb Caen Way (The Embarcadero Promenade).

**Project Summary:**
Due to lack of full funding and the various types of construction work involved, the Port staff divided this project into three phases, as follows:

- Phase I: Construct a 100-feet pier extension to connect the Embarcadero Promenade to the existing breakwater, and a circular terminus at the end of the pier, which extends 600-feet into the Bay.

This Print Covers Calendar Item No. 6A

- Phase II: Install 192 feet of guardrail along new the concrete deck at Herb Caen Way and a new portal and roll-up door along the pier entrance.
- Phase III: Install approximately 1,300 feet of guardrail along the Pier the in East-West direction, and install signs, benches, and related improvements.

Until completing the third phase, the portal gate will remain closed at all times to block access to the pier. After the third phase is complete, the public access to the pier will continue to be restricted between 10 p.m. to 6 a.m. to protect public safety and Port property from vandalism and other destructive acts during the nighttime when there are few people in the area.

**Completed Work:**
Phase I work was substantially completed by Dutra Construction Inc. on December 1, 2004. Port staff is therefore prepared to proceed with work under Phase II.

**Contract Modification Work:**
Port staff is seeking authorization to execute a contract modification to include Phase II work to the existing construction Contract with Dutra for a cost not-to-exceed $193,000 and to extend the completion date to March 1, 2004. The reasons are as follows:

1) Public Safety: In order to protect public safety, the guardrail and entry portal with a closeable gate are required at the area of the pier entrance. This will allow the current construction fences to be removed and the current contract to be closed out.
2) Cost-effective: The proposed approach would be the most cost effective because the contractor, Dutra Construction Inc, is already mobilized, thereby avoiding additional mobilization, insurance and administrative costs.
3) Obligation to grant agencies: The Port has funded the first phase with several State and Federal grants. In order to meet our grant obligations and not lose other outstanding funds, the Port needs to have a continuous construction effort toward the final project goal.
4) Lowest price: Dutra has provided us documents indicating that their bid is based on a comparative cost analysis. These documents have been carefully evaluated by Port staff and determined to be satisfactory.
5) Best quality: Dutra's proposed plan to perform this work has been reviewed for quality assurance. The Port staff believes the subcontractors are the most qualified firms to perform this work.

The total contract price, after the proposed modification will be for the not-to-exceed sum of $1,320,500, as follows:

| | |
|---|---|
| Contract award: | $1,127,500 |
| This contract modification: | 193,000 |
| Total contract amount: | $1,320,500 |

This modification would add about 17% to the existing contract price. HRC staff has reviewed and approved this proposed contract modification with Dutra Construction Inc.

The work would be funded as follows:

| Funding Source | | Amount |
|---|---|---|
| Coastal Conservancy Grant | | $ 30,000 |
| Port Capital Funds. | | $163,000 |
| | Total | $193,000 |

**Remaining Work to Be Completed:**
Phase III work will be completed in a separate contract. The estimated cost of Phase III is approximately $900,000. Port staff is in process of applying for several grant funds for this work, and will advertise for the construction of Phase III work when funds are secured. Upon completion of Phase III, this project will be complete, allowing visitors to walk out over the Bay, fish, view interpretive signage about ferry activities, Bay currents and habitat, observe ferry activities in the adjacent harbor, and enjoy views of the City and Bay Bridge.

**Summary:**
Port staff seeks Commission approval to execute a contract modification to Contract No. 2679, "Downtown Ferry Terminal Public Pier" for an amount not-to-exceed $193,000 to complete this necessary additional work by March 1, 2004.

Prepared by: Mojgan Yousefkhan
Project Manager

For: Ed Byrne
Acting Chief Harbor Engineer

# PORT COMMISSION
# CITY AND COUNTY OF SAN FRANCISCO

## RESOLUTION NO. 03-71

WHEREAS, the Port Commission, at its meeting on October 8, 2002, authorized the advertisement of the construction contract for the Downtown Ferry Terminal Public Pier, Contract No. 2679; and

WHEREAS, Port staff received five bids on February 21, 2003; and

WHEREAS, the Port Engineering and the Human Rights Commission Staff reviewed the bids and have determined that Dutra Construction Inc. is the lowest responsive, responsible bidder; and

WHEREAS, the Port Commission, at its meeting on March 25, 2003, authorized Port staff to award construction Contract No. 2679 for the Downtown Ferry Terminal Public Pier to Dutra Construction Inc. for the amount of $1,025,000.00, plus a 10% contingency, for a total contract amount of $1,127,500.00; and

WHEREAS, Dutra Construction Inc. substantially completed the work under the existing contract on December 1, 2004, thereby completing Phase I of the project; and

WHEREAS, a contract modification is necessary to proceed with Phase II of the project, including new guardrail along the concrete deck, entry portal, and roll-up door at the pier entrance, as described in the staff report accompanying this resolution; and

WHEREAS, this contract modification is required to complete improvements under Phase II that are needed to protect public safety and comply with the grant agencies' requirements; and

WHEREAS, Port staff has negotiated a not-to-exceed price of $193,000 with Dutra Construction Inc for the necessary work for Phase II of the project; therefore be it

RESOLVED, that the San Francisco Port Commission authorizes staff to execute a contract modification to the existing Contract No. 2679, " Downtown Ferry Terminal Public Pier " with Dutra Construction Inc. for an amount not to exceed $193,000; and be it further

RESOLVED, that the San Francisco Port Commission authorizes staff to extend the project completion date of the existing Contract 2679 with Dutra Construction Inc. to no later than March 1, 2004, and further authorizes the Executive Director to accept the work upon completion.

***I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of December 16, 2003.***

Secretary

PORT OF
SAN FRANCISCO

## MEMORANDUM

December 11, 2003

**TO:** MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Michela Alioto-Pier
Hon. Sue Bierman
Hon. Wilfred Hsu

**FROM:** Douglas F. Wong
Executive Director

**SUBJECT:** Request for adoption of the Port of San Francisco's Unreinforced Masonry Bearing Wall Building Seismic Mitigation Program.

**DIRECTOR'S RECOMMENDATION:** Adopt the Port of San Francisco's Unreinforced Masonry Bearing Wall Building Seismic Mitigation Program.

## BACKGROUND:

State law and a San Francisco ordinance require owners of unreinforced masonry bearing wall buildings (UMBs) to take reasonable measures to address the potentially hazardous conditions created by these structures. The City's ordinance requires UMBs either to be rehabilitated or demolished by February 2004.

The Port has two buildings that qualify as UMBs: Building 104 and Building 113-114, both located on 20th Street at Pier 70. These two UMBs are also among the Port's and the city's most significant historic resources: They are eligible for individual listing on the National Trust for Historic Preservation and are contributors to a potential new National Historic District at Pier 70. These buildings were examined as part of the RFP process the Port undertook in 2001 and 2002 for a potential mixed use development project and initial cost estimates were developed for their seismic stabilization.

To date, the Port has been unable to secure the requisite funding to undertake the rehabilitation of these buildings. As the Port is not subject to the City UMB Ordinance and may independently comply with the State UMB Ordinance by adopting its own UMB mitigation program, it may establish protective measures and implementation timeframes. However, until these buildings are ultimately strengthened and the hazard abated the Port's liability exposure will continue.

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Port staff have developed the "Port San Francisco's Unreinforced Masonry Bearing Wall Building Seismic Mitigation Program", attached as Exhibit 1; it will be included in the Port's proposed Building Code, which is currently being finalized. This UMB program has been developed solely to respond to the unusual set of circumstances affecting the two historic buildings:

- The two UMBs are very large historic buildings, built at the turn of the century and, as such, would have to rehabilitated to meet the standards of the US Secretary of the Interior;
- Between $8 and $15 million would be necessary to seismically strengthen these buildings, depending on which engineering method is taken, and which of several possible new uses the buildings are put;
- Funding these buildings at from Port funds is not feasible and, unlike other City departments, the Port, as an enterprise department, does not have access to city or state funds;
- Funding the rehabilitation as part of a new development project, would be viable if new uses can be found that meet the State Lands Commission's public trust doctrine and if the current economic downturn is reversed;
- However, the state and the city's legal requirements must be

The Port's UMB Program gives a high priority to the public's health and safety by minimizing public exposure to the potentially dangerous conditions known to exist with unreinforced masonry bearing wall construction. The program includes provision for vacating, securing, barricading and monitoring these buildings. Once funds are secured, the building would also be documented and "mothballed" according to the standards of the Secretary of the U.S. Department of the Interior.

The UMB program commits the Port staff to submit a report to the Port Commission each year between 2004 and 2014, to include: (a) information on the progress made in securing funds for the buildings' preservation and redevelopment; (b) any changes to the structural conditions done by visual inspection; (c) the security monitoring that has taken place in the preceding year; and (d) on any additional actions that might be necessary to protect the public safety.

If, by March 2012, however, or sooner if public safety cannot be maintained and no rehabilitation project is forthcoming, under this program the Port Commission would issue a notice of its intent to prepare an Environmental Impact Report to demolish one or both of the buildings, as applicable. Assuming the EIR has been carried out by March 30, 2014, the Port Commission would have the sole authority, to seismically retrofit the building(s), demolish the building(s), or extend the deadline for securing funds to rehabilitate the structures.

Exhibit 1, attached, provides greater detail on the purpose and background of the mitigation program.

## RECOMMENDATION:

Port staff requests that the Commission adopt the attached Port of San Francisco's Unreinforced Masonry Bearing Wall Building Seismic Mitigation Program to deal with the unsafe condition know to exist with these type of buildings. In adopting this Program the Commission directs staff to draft a Port Building Code, which when adopted, will incorporate the Port's UMB

Program, to continue to follow all other sections of the San Francisco Building Code until the Port Building Code is adopted, to send a letter to the State Seismic Safety Commission and the City's Department of Building Inspection stating the Port's adoption of the UMB Program, and to find the necessary funding to seismically upgrade these buildings to comply with the Port of San Francisco's Unreinforced Masonry Bearing Wall Seismic Mitigation Program.

Prepared by: Ed Byrne, Senior Civil Engineer, SE,
Acting Chief Harbor Engineer

Lynda Weisberg Swanson,
Project Manager Pier 70,
Planning and Development

# EXHIBIT 1:
# UNREINFORCED MASONRY BEARING WALL BUILDING SEISMIC MITIGATION PROGRAM

## PURPOSE

The purpose of this program is to promote public safety and welfare by reducing the risks of injury and damage that may result from the effects of an earthquake in and around the Port's existing unreinforced masonry buildings ("UMBs).

The provisions of this program are intended to set minimum requirements for vacating, barricading and securing these buildings. This program also sets a timeline for the UMB building strengthening and establishes the minimum seismic resistance repair requirements to reduce the risk of death or injury from earthquake ground shaking. Compliance with these provisions will not necessarily prevent loss of life or injury, prevent earthquake damage or protect the function of rehabilitated structures.

## BACKGROUND

State law requires owners to take reasonable measures to address dangerous conditions on public property or be held liable for damage or injury. State law and a City ordinance, based on that law, require all owners of UMBs to protect the public from the earthquake hazards of these buildings. A survey of the Port's building inventory revealed that the Port has two buildings with one or more unreinforced masonry bearing walls, which qualifies them as UMBs. Buildings 104 and 113 are located opposite each other on Twentieth Street in the Pier 70 area. Although these buildings were examined as part of a mixed use opportunity RFP process in 2001 and 2003, no project has been funded to make the extensive seismic repairs required to make these buildings comply with the City ordinance.

Under the City ordinance, these buildings must have an extensive and costly structural modification and rehabilitation constructed, or they must be demolished by February 15, 2004. At this time, the Port cannot reasonably meet the ordinance's strengthening deadline. The City Attorney's Office has recently concluded that the Port, while subject to the State law, is not subject to the City ordinance and thus may adopt the City Ordinance or its own UMB mitigation program.

The Port's historic building assets at Pier 70 are extensive and significant. Building 113 and Building 104 are distinct and unique structures in this historic area. Building 113 was built in 1886-87 by the Union Iron Works, predecessor to Bethlehem Steel. Building 104 was constructed in 1896, also by Union Iron Works. Both buildings are UMBs and thus constitute a dangerous and life-threatening condition. Both buildings are also eligible as individual structures for listing on to the National Register for Historic Preservation and as contributors to a potential new National Register Historic District at Pier 70. Building 113 has singular historic quality and importance and may be a potential National Historic Landmark (NHL), in recognition of its importance on the national level, a higher level status than the National Register. The buildings have been recognized by the Landmarks Preservation Advisory Board, the City Planning Department, the SF Planning Commission and the State Historic Preservation Office.

The Port is not subject to the City UMB Ordinance and may independently comply with the State UMB Ordinance by adopting its own UMB mitigation program, establishing protective measures and implementation timeframes. The Port's liability exposure will continue until these buildings are ultimately strengthened and the hazard abated.

This program establishes the Port's UMB mitigation program. To reduce the Port's liability exposure, this program specifies protective measures required to minimize the public's exposure to this hazardous condition and reduce the potential for injury. The ultimate goal of this program is to require that these structures be repaired to meet the minimum standards specified in San Francisco Building Code ("SFBC")

## UMB USE RESTRICTION AND MITIGATION REQUIREMENT

The provisions of this program apply to Port Buildings 104 and 113, the Port's only buildings that have one or more bearing walls of unreinforced masonry and qualify as UMBs. The requirement for seismic strengthening of these buildings shall be as specified in Chapter 16C of the San Francisco Building Code ("SFBC"). Compliance with this program does not supersede the requirements for compliance otherwise required in SFBC Chapter 34.

A permit issued solely for compliance with the provisions of this program shall not be considered "substantial change" or "structural work" as defined in SFBC Section 3403 and compliance with SFBC 3403.6 will not be required.

These structures shall be secured, sealed and strengthened to meet the minimum standards specified in this program. Construction and repair work shall commence and a certificate of Final Completion and Occupancy or final inspection shall be obtained within the time limits set forth in Table 1. If the buildings should become an imminent hazard to life/safety the Port is empowered under its regulatory authority to take more drastic action.

### TABLE 1
### PROGRAM IMPLEMENTATION SCHEDULE

| Phase | Description | Deadline |
|---|---|---|
| I – Vacate | Vacate the premises including people, equipment and storage. Non-movable equipment considered a part of the structure such as the various cranes shall not be removed. Place signs prominently on the buildings to notify the public of the dangers.<br>One month prior to vacating, Port Planning staff to prepare inventory of historic resources in buildings that are to remain and send to Real Estate to be part of lease vacation facility review. | January 31, 2004 |

| | | |
|---|---|---|
| II – Seal/Barricade and Submit 10-year Plan | a. Submit a UMB Development and Funding Program proposal identifying development and fund-raising efforts, community partnership plans and milestone schedules. Proposal shall include analysis of historic preservation needs, environmental review requirements, use opportunities, projected costs, identification of Port capital funds and external sources, and community issues.<br>b. Seal and barricade the structure(s) to reasonably prevent unlawful entry and protect the public from hazards related to the buildings [1]<br>c. Submit a Rapid Assessment Report to the Commission in accordance with the Facility Assessment protocol to document the structural condition of each of the facilities.<br>d. Submit a Security Monitoring Plan to the Commission to clearly identify oversight schedule and reporting procedures. | March 30, 2004 |
| III. | Carry out a more extensive mothballing and documentation program in accordance with the standards of the Secretary of the US Department of the Interior and the National Park Service . | February-August, 2004 |
| IV – Implement 10-year Plan | Each year, prior to the first Commission meeting in March Port Planning to prepare an UMB Annual Staff Report for each of the Port's UMBs to include the following:<br>a. Status report on Development and Funding Program progress based upon proposal submitted in Phase II.<br>b. Overall structural condition of the buildings and surrounding barricade system. Such report shall be based upon an initial report submitted to the Commission in Phase II. Relative significant changes shall be noted to the Commission in the report. The Report shall be based upon visual inspections of the building exteriors only and will not be intended to suffice as a detailed condition survey upon which repair plans shall be based. | March of years 2004 to 2012; continue to 2014 |

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[1] Building sealing shall include placing a rigid plywood cover over wall openings, to be attached in such a way, if physical feasible, that the walls and windows are not irreversibly damaged, doors and window to a minimum of 8 feet high above the adjacent grade. The barricades shall consist of an 8 feet high assembly of k-rail and chain link fences, or just chain link fences where there is no traffic, located approximately 8 feet from the building walls. Utility disconnects shall be included.

| | | |
|---|---|---|
| | c. Summary of prior year Security Monitoring reports.<br>d. Annual status report may include recommendations on actions appropriate to protect public safety:<br>i. Modifications to the structures or surrounding barricade system<br>ii. Modifications to the Security Monitoring Plan<br>a. If funds are obtained, submit strengthening and renovation plans for Port's Building Permit.<br>b. If, however, in the course of monitoring the facilities, staff determines public safety as it relates to one or both of these buildings cannot be maintained, and if no building permit application for retrofitting is made, submit an Emergency Report to the Commission to obtain approval for demolition intent. Upon approval, send notice to the public of intent to prepare an Environmental Impact Report to demolish one or both of the buildings, as applicable. The demolition will be performed in accordance with a demolition plan, involving detailed examination, drawings, documentation, etc that are consistent with applicable code requirements. | |
| V– Complete Structural Alterations or Demolition | Complete one of the two actions below, at which time the building can be removed from the UMB Inventory by the Chief Harbor Engineer:<br>a. Seismically retrofit the buildings in accordance with applicable code requirements and issue a Certificate of Final Completion by the Chief Harbor Engineer;<br>Or demolish the buildings in accordance with applicable code requirements. The Port Commission shall have the sole authority to authorize an extension of the deadline for Phase V. Such extension shall be considered based upon the full and balanced analysis to include: the risk to public health and safety, the exposure to the Port of San Francisco and the community, financial hardship, UMB Annual Staff Reports, status of Development and Funding Program, and the impact to the environment | March 30, 2014 |

# PORT COMMISSION
# CITY AND COUNTY OF SAN FRANCISCO

## RESOLUTION NO. 03-72

WHEREAS, California Government Code Section 8875 *et seq* (the "State UMB Ordinance") requires local building departments within Seismic Zone 4 to inventory potentially hazardous buildings, establish a mitigation program for such buildings and submit a report to the State Seismic Safety Commission; and

WHEREAS, The State UMB Ordinance defines a "local building department" as a department or agency of a city or county charged with the responsibility for the enforcement of local building codes; and

WHEREAS, The State UMB Ordinance defines a "potentially hazardous building" as an unreinforced masonry building ("UMB") constructed prior to the adoption of local building codes requiring earthquake resistant design; and

WHEREAS, The State UMB Ordinance gives each local building department the discretion to formulate any type of mitigation program it chooses; and

WHEREAS, The City and County of San Francisco (the "City") is in Seismic Zone 4; and

WHEREAS, Pursuant to the State UMB Ordinance, the City Board of Supervisors enacted the "Earthquake Hazard Reduction in Unreinforced Masonry Bearing Wall Buildings" and codified it as Chapter 16B of the San Francisco Building Code (the "City UMB Ordinance"); and

WHEREAS, The City UMB Ordinance establishes a mandatory reinforcement program for UMBs located in the City and specifies deadlines for compliance; and

WHEREAS, The City UMB Ordinance is administered by the City Department of Building Inspection ("DBI"); and

WHEREAS, Under well-established principles of sovereignty, City departments are not subject to the UMB Ordinance because the Board of Supervisors did not expressly bind the City when enacting the City UMB Ordinance; and

WHEREAS, Based on the administrative authority granted to it in Charter Section D3.750-4, DBI has elected to make the City UMB Ordinance applicable to the City itself; and

WHEREAS, The Port is not subject to the administrative powers of DBI pursuant to Charter Section D3.750-4 which divests DBI's of its administrative powers "where the Charter specifically grants that power to another department"; and

WHEREAS, Section 3.581 of the City Charter empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City; and

WHEREAS, Section 3.581 of the City Charter further empowers the Port Commission with the authority "to establish such departments and bureaus as may be necessary or convenient for the conduct of its affairs"; and

WHEREAS, The Port Commission has established its own building department with the responsibility for enforcement, administration, and interpretation of building standards on Port property; and

WHEREAS, The Port building department is considered a local building department under the State UMB Ordinance; and

WHEREAS, The Port must comply with the State UMB Ordinance even if it elects not to comply with the City UMB Ordinance; and

WHEREAS, As required by the State UMB Ordinance, the Port has conducted an inventory of UMBs located on Port property and has identified Buildings 104 and 113 at Pier 70 as UMBs; and

WHEREAS, To fully comply with the State UMB Ordinance, the Port must establish its own mitigation program for the two identified UMBs and report a description of the program to the State Seismic Safety Commission; and

WHEREAS, If the Port elects to comply with the City UMB Ordinance rather than establishing its own mitigation program under the State UMB Ordinance, it must seismically retrofit the two identified UMBs by February 15, 2004; and

WHEREAS, Port staff has determined that the February 15, 2004 deadline set forth in the City UMB Ordinance is not reasonable for the Port for the following reasons:

1) The two UMBs are historic buildings built at the turn of the century, and approximately $8 to $15 million would be necessary to seismically strengthen both buildings to applicable standards;
2) Unlike other City departments, the Port is an enterprise department and must generate its own income for all operating expenses;
3) Among its many priorities is the Port's obligation to fulfill its public trust responsibilities; and
4) The State Lands Commission's public trust determinations limit the potential uses of the two UMBs; and
5) The current economic downturn has limited the development prospects for the two UMBs; and

WHEREAS, Port staff believes that adoption of a mitigation program that addresses the unique challenges faced by the Port is necessary; and

WHEREAS, Port staff has formulated a mitigation program, as fully outlined in the Staff Memorandum dated December 10, 2004 for Agenda Item 5.B. (the "Staff Memorandum"), which balances the challenges faced by the Port with the importance of protecting the public safety; and

WHEREAS, Port staff recommends that the Port Commission independently comply with the State UMB Ordinance by adopting the mitigation program outlined in the Staff Memorandum; and, now, therefore, be it

RESOLVED, That, based on its own review and staff's recommendation, this Port Commission finds that the deadline set forth in the City UMB Ordinance is not reasonable for the Port in light of the unique challenges faced by the Port; and be it further

RESOLVED, This Port Commission hereby elects to independently comply with the State UMB Ordinance rather than complying with the City UMB Ordinance; and be it further

RESOLVED, that this Port Commission adopts the attached Port of San Francisco's Unreinforced Masonry Bearing Wall Seismic Mitigation Program; and be it further

RESOLVED, that the Port Commission finds that the Mitigation Program provides for adequate notification and building security to protect the public safety while providing the Port a reasonable period of time to obtain the funding for a permanent solution to the seismic hazards posed by UMBs; and be it further

RESOLVED, that this Port Commission approves the Mitigation Program outlined in the Staff Memorandum; and be it further

RESOLVED, that this Port Commission directs staff to draft a Port Building Code for Commission consideration, that, when adopted would incorporate Seismic Mitigation Program; and be it further

RESOLVED, that this Port Commission directs staff to apply the San Francisco Building Code, with the exception of the Earthquake Hazard Reduction for Unreinforced Masonry Bearing Wall Buildings, codified as Chapter 16B of the San Francisco Building Code, until the Port Building Code is reviewed and adopted by this Commission; and be it further

RESOLVED, that this Port Commission directs staff to send a letter to the State Seismic Safety Commission and the City's Department of Building Inspection advising them of the adoption of this Seismic Mitigation Program ; and, be it further

RESOLVED, that this Port Commission directs staff to find the necessary funding to seismically upgrade these buildings to comply with the Seismic Mitigation Program; and be it further

RESOLVED, That this Port Commission authorizes and directs the Executive Director of the Port (the "Executive Director") and any other appropriate officers, agents or employees of the City to take any and all steps as they or any of them deem necessary or appropriate, in consultation with the City Attorney, in order to consummate the actions approved in this Resolution, or to otherwise effectuate the purpose and intent of this resolution, including without limitation, informing the State Seismic Safety Commission, DBI and any other relevant parties of the Port's mitigation program as adopted herein; and be it further

RESOLVED, that this Port Commission directs the Executive Director to formulate and draft a Port building code for review and consideration by the Port Commission in the near future; and be it further

RESOLVED, that this Seismic Mitigation Program shall be incorporated into any building code adopted by the Port Commission.

***I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of December 16, 2003.***

Secretary

PORT OF
SAN FRANCISCO

# MEMORANDUM

December 11, 2003

**TO:** MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Michela Alioto-Pier, Commissioner
Hon. Sue Bierman, Commissioner
Hon. Wilfred Hsu, Commissioner

**FROM:** Douglas F. Wong
Executive Director

**SUBJECT:** Authorize Staff to Issue a Request for proposals (RFP) for the Lease of the Roundhouse One Building located at the Embarcadero and 1500 Sansome Street

**DIRECTOR'S RECOMMENDATION:** APPROVE RESOLUTION

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## I. HISTORY

In 1981, the Port Commission issued a request for proposals for the historic rehabilitation and development of its property located at Seawall Lot 318 (Embarcadero and Sansome Street), known as Roundhouse Plaza. In 1982, the Port Commission awarded a thirty-five (35) year lease to Westcap Heritage Investors, L. P. With the use of the Federal Historic Rehabilitation Tax Credit, Westcap undertook the historic rehabilitation of the national-register listed Roundhouse One building and the adjacent Sandhouse building, and constructed a new four-story office building in 1987.

Due to changing economic conditions, Westcap defaulted under the lease with the Port, and the Port terminated the Westcap Lease in 1997. The Port now manages and leases the Roundhouse Plaza complex directly.

In 1999, the Port issued a Request for Proposal (RFP) for a ten- (10) year lease of the Roundhouse One Building. Following a review of three submitted proposals, the Port awarded a ten (10) year lease to IN Radio, LLC. IN Radio took possession in the spring of 2000 and commenced construction of a $3.5 million remodel of the Roundhouse One Building for use as

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broadcast studios for up to twelve channels of clear channel satellite radio. Due to the changing economic conditions, the tenant was not able to complete their project and the lease was terminated in 2002. Port staff estimates that the tenant has completed the build-out to approximately 80%. The Roundhouse is currently vacant.

## II. REQUEST FOR PROPOSALS

Because the Roundhouse One Building consists of a significant amount of leaseable space and will require substantial investment in tenant improvements, Port staff recommends the issuance of a request for proposals for the lease, build-out and operation of the space on the following terms and conditions. A copy of the proposed RFP is attached hereto.

### A. Project Objectives.

The RFP will state the following as the project objectives:

- Maximize Port revenue from the site.
- Provide for the interior renovation of the vacant facility that conforms to the Secretary of the Interior Standards for Rehabilitation and meets all current building code requirements.
- Provide Building Code upgrades to the Roundhouse Building as required.
- Provide a project consistent with the policies, standards and design criteria in the Waterfront Plan and the Waterfront Design & Access Element.
- Provide a user or users consistent with the applicable provisions of the Waterfront Plan in a manner compatible with the surrounding area and uses.

### B. Use.

Proposals must be consistent with the Port's *Waterfront Land Use Plan* ("Waterfront Plan"). The following uses, or a combination thereof, are consistent with the Waterfront Plan and may be considered by the Port for inclusion in any proposal: general office, community facilities, and retail (including restaurant). The table below includes a more detailed definition of each of these uses.

| Roundhouse Building, Seawall Lot 318, Acceptable Uses and Definitions | |
|---|---|
| General Office | Includes but is not limited to: administrative, management, executive, business service, research and development and professional services for small and large companies. |
| Community Facilities | Public safety and community service facilities, including but not limited to: fire and police stations, postal services, day care, health care, libraries and community meeting rooms. |
| Retail (including restaurant) | Retail sales of goods and services, including but not limited to: restaurants and other eating and drinking establishments, shops, personal services, dry goods, public and other markets and retail outlets. |

Given the available square footage within the building and the layout of the two floors, a single use or a mix of two or more of the uses as described above may be proposed. The Site could be used for one or more distinct operations under a lease with a single user. For example, a restaurant or office space could be accompanied by related retail uses.

## C. Selection Criteria.

The Port will use the following criteria in evaluating the responses to this Request for Proposals:

- Economic return to the Port based on Base Rent and Percentage Rent proposed by Respondent.

- Financial viability of the proposal based on adequacy of projected revenues to support the investment, reasonableness of the cash flow analysis, and proposed capital investment for improvements.

- Experience and organization of the Respondent's team based on clear lines of authority and assignment of responsibilities, demonstrated responsiveness and decisiveness, and overall qualifications and availability of key individuals of the Respondent's team, economic success of similar ventures, relationships with other similar operators, ability to implement development and or leasing projects quickly and effectively, and ability to work constructively with City and community representatives.

- Experience and reputation of the operator based on the operator's breadth of experience, partnerships in public/private or private ventures, quality and success of other retail/restaurant/office/community facilities ventures over time, uniqueness of other ventures, and ongoing management of retail/restaurant/office/community facilities operations.

- Quality, uniqueness, and potential for success and successful fit of the use concept based on the type and character of project proposed, targeted clientele, appeal to a diversity of users, compatibility with the neighborhood's setting, and the extent to which the proposed uses would promote the public trust objectives as set forth in the Burton Act and in the Waterfront Land Use Plan.

- Experience and qualifications of design consultants (engineer, architect, landscape architect, interior designer, etc.) based on their experience on projects with similar site characteristics, reputation for flexibility and responsiveness to public and community concerns, compatibility of designs with setting, especially with nearby historic resources, success in integrating indoor and outdoor settings, and experience with design review processes of the City.

- Quality of conceptual design for the proposed tenant improvements based on conceptual design and space layout, relationship of the design to the Embarcadero Roadway and Promenade, sensitivity to and integration with adjacent historic properties, the minimum amount of alteration to the exterior of the building, enhancement of views to, from, through and around the building, success in meeting design criteria in the Waterfront Plan and its Design and Access Element.

- Financial capacity and plan of the Respondent based on ability to fund preliminary design and predevelopment costs and ability to raise and commit capital for construction, start up operations, and continuing operations and maintenance.

- Financial viability of the proposal based on adequacy of projected revenues to support the investment, reasonableness of the cash flow analysis, and proposed capital investment for improvements.

- Term of Lease based on minimum term required to support cost of proposed improvements and comparable situations in the market.

- Description of Capital Investment: Proposals must include descriptions of proposed capital investments and the anticipated level of proposed capital investment.

The Port will select a the most qualified Respondent who has the demonstrated ability to finance, design, construct, maintain and operate the leasing opportunity as described above and will consider the extent to which each proposed use would promote the public trust objectives set forth in the Burton Act and Waterfront Land Use Plan. As well, substantial rehabilitation and waterfront development experience are desired. The Commission will select a Respondent that can successfully use the existing building for a use or uses that will take full advantage of the spectacular Bay and City views, the adjacent Embarcadero Roadway and Promenade, and will activate and enliven the waterfront.

## D. Proposed Rent and Key Lease Terms.

The actual terms of the lease will be negotiated with Port Staff and are subject to final approval by the Port Commission and the San Francisco Board of Supervisors.

### Base Rent

Rather than set a minimum base monthly rental rate, the Port is requiring Respondents to propose a base monthly rate comparable to like situations in the market. Rental adjustments must also be proposed. A period of rent abatement for the purpose of constructing improvements may be included.

### Percentage Rent

If applicable, proposals must include a Percentage Rent payable to the Port on gross receipts for food, beverages and merchandise. The percentage rent rate is not being dictated by the Port but should be comparable to like situations in the market.

The higher of the Base Rent or the Percentage Rent would be payable to the Port. In any month in which the Percentage Rent does not exceed the Base Rent, only the Base Rent would be payable to the Port.

### Term

Proposals must include a proposed initial term plus option periods, if any, based on the cost of tenant improvements and comparable situations in the market.

### Tenant Improvements

Proposals must include the estimated cost of proposed tenant improvements, a description of same and a schedule for their completion.

### Security for Performance

The Lease will require the tenant to post a construction completion bond, letter of credit, or other security satisfactory to the Port for the lien-free completion of the proposed improvements.

### Historic Preservation

In its build-out and operation of the Site, the Lease will require the tenant to comply with the Secretary of Interior Standards for Historic Preservation for interior and exterior alterations see Appendix for Secretary Standards. Because the property is a designated City Landmark site, the Tenant must also secure a certificate of Appropriateness from the San Francisco Planning Department or the Planning Commission upon the advice and recommendation of the Landmarks Board for exterior alterations.

## E. Project Approvals

General office, community facilities, and retail/restaurant uses proposed for the Roundhouse Building are included in the Waterfront Plan, which has been approved by the Port. Nevertheless, the specific plans for the Site may require various permits and approvals, and each prospective Respondent will be ultimately responsible for determining which permits and approvals will be required for the construction and operations proposed at the Site and for obtaining such permits and approvals. At a minimum, the Lease and project design will require approval by the Port Commission. If the lease term is ten (10) years or more, or would result in more than One Million Dollars in anticipated revenue, the San Francisco Board of Supervisors must also approve the lease.

## F. Exclusive Right to Negotiate

If the Port Commission selects a respondent, the Port will enter into an exclusive right to negotiate ("ERN") an agreement, during the term of which Port staff would negotiate a lease with the selected Respondent based on the Port's standard lease format. Upon Port Commission authorization of exclusive negotiations, the selected Respondent must submit a Twenty Five Thousand Dollar ($25,000.00) non-refundable fee for a two (2) month period of exclusive negotiations. The ERN will include the following terms:

- A lease agreement and related documents for the lease and development of the Site in a final form approved by the San Francisco City Attorney will be negotiated incorporating specific terms including, but not limited to, the Port's and lessee's responsibilities, the economic parameters, development standards and requirements, and a performance schedule.

- The selected Respondent will complete its "due diligence" review of the Site, finalize financial projections, and complete preliminary development plans including, but not limited to floor plans, elevations, and renderings for the Site.

- The selected Respondent, with the Port's assistance, will complete the project approval processes and any required supplemental environmental review.

The period of exclusive negotiations may be extended solely at the Port's option. The fee for extending the period for exclusive negotiations will be Five Thousand Dollars ($5,000.00) per month, payable in advance.

## G. Environmental Review

The selected developer may be required to submit an Environmental Evaluation application to the San Francisco Planning Department particularly if the project involves a change or intensification of use. Additionally, environmental review may also be required for projects that propose to alter the structure because it is the designated City Landmark and listed on

the National Register of Historic Places and is officially designated as an historical resource under the California Environmental Quality Act (CEQA).

All applicable requirements of CEQA must be met before the Port Commission or Board of Supervisors authorizes the project and /or executes a lease. Likewise, CEQA review of the project must be completed prior to the authorization of building permits by the Port for interior or exterior alteration of the structure. Additionally, permits for alteration and construction to the exterior of the landmark structure require authorization of a Certificate of Appropriateness by the Planning Department, or Planning Commission, upon receipt of the advice and recommendation of the Landmarks Preservation Advisory Board.

## NEXT STEPS

If authorized, Port staff will proceed with the development solicitation process according to the following proposed schedule:

- Issuance of RFP: **December 17, 2003**
- Pre-proposal Conference & Site Tour: **March 3, 2004, 1:00 p.m.**
- Submittal of Proposals Due: **April 28, 2004, 1:00 p.m.**
- Staff review and evaluation of proposals and interviews: **April 29 - May 29, 2004**
- Staff recommendation to Commission regarding Exclusive Negotiations: **June 8, 2004**
- Exclusive Negotiation Period: **June 9 – August 29, 2004**

Prepared by: Phil Williamson, Senior Property Manager
Jeffrey A. Bauer, Senior Leasing Manager

## PORT COMMISSION
## CITY AND COUNTY OF SAN FRANCISCO

### RESOLUTION NO. 03-73

WHEREAS, Charter Section B3.581 empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of the City and County of San Francisco; and

WHEREAS, the Port owns certain property known as the Roundhouse One Building; and

WHEREAS, the Port Commission now wishes to lease the Roundhouse One Building consistent with the Port's Waterfront Land Use Plan; and

WHEREAS, Port Commission policy encourages competitive bidding of economic opportunities unless impractical or impossible; NOW, THEREFORE, be it

RESOLVED, that the San Francisco Port Commission hereby authorizes and directs Port staff to issue a request for proposals for the leasing development of the Roundhouse One Building site located at 1500 Sansome Street in accordance with the terms set forth in the memorandum to the Port Commission for Agenda Item 7A of the Port Commission Meeting on December 16, 2003.

***I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of December 16, 2003.***

Secretary

# PORT OF SAN FRANCISCO

# REQUEST FOR PROPOSALS

# LEASING DEVELOPMENT OPPORTUNITY

# ROUNDHOUSE BUILDING

## CITY AND COUNTY OF SAN FRANCISCO

Willie L. Brown, Jr., Mayor

### SAN FRANCISCO PORT COMMISSION

Michael Hardeman, President
Kimberly Brandon, Vice President
Michela Alioto-Pier, Commissioner
Sue Bierman, Commissioner
Wilfred Hsu, Commissioner

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## APPENDICES

Appendix A: Roundhouse Building Site Plan

Appendix B: Condition Survey

Appendix C: Excerpts from the Port of San Francisco Waterfront Land Use Plan

Appendix D: Excerpts from the Waterfront Design and Access Element

Appendix E: Standard Form of Lease

Appendix F: City Requirements

Appendix G: Statement of Ability to Comply with City and Other Governmental Requirements and Agreement to Conditions

Appendix H: Standard Form of Exclusive Right to Negotiate

Appendix I: Landmarks Preservation Advisory Board Statement of Significance

## I. THE OPPORTUNITY

The Port of San Francisco ("Port") is soliciting proposals from qualified respondents ("Respondents") for the lease of the Roundhouse One Building (the "Site"), located at 1500 Sansome Street on the Embarcadero. The lease must be consistent with the Port's *Waterfront Land Use Plan* ("Waterfront Plan"). The Waterfront Plan lists the following uses or a combination thereof, as acceptable by the Port for inclusion in any proposal for the Site: general office, community facilities and retail (including restaurant). The table below includes a more detailed definition of each of these acceptable uses:

| **Roundhouse Building, Seawall Lot 318**<br>**Acceptable Uses and Definitions** |
|---|
| **General Office** – Includes but is not limited to: administrative, management, executive, business service, research and development and professional services for small and large companies. |
| **Retail** – Retail sales of goods and services, including but not limited to: restaurants and other eating and drinking establishments, shops, personal services, dry goods, public and other markets and retail outlets. |
| **Community Facilities** – Public safety and community service facilities, including but not limited to: fire and police stations, postal services, day care, health care, libraries, and community meeting rooms.<br>*Source: Excerpts from the Waterfront Land Use Plan* |

The Site, which consists of approximately 20,325 square feet of enclosed space, is located on the Embarcadero at 1500 Sansome Street, between downtown San Francisco and Fisherman's Wharf. The Site is a designated City landmark (No. 114) and has been listed on the National Register of Historic Places since 1986. A copy of the Landmarks Preservation Advisory Board Statement of Significance is provided in Appendix I. A plan of the Site is included in Appendix A.

Given the available square footage within the building and the layout of the two floors, a single use or a mix of two or more of the uses described above may be proposed. As well, the Site could be used for one or more distinct operations under a lease with a single user. For example, a restaurant or office space could be accompanied by related retail uses. The Port will entertain a variety of proposals provided that the uses are acceptable and the Project Objectives set forth in this RFP are achieved. The Site could be used for one or more distinct operations under a lease with a single user.

The Port will select a qualified Respondent who has the demonstrated ability to finance, design, construct, maintain and operate the leasing opportunity as described above. As well, substantial rehabilitation and waterfront development experience are desired. The Commission will select a Respondent that can successfully use the existing building for a use or uses that will take full advantage of the spectacular Bay and City views, the adjacent Embarcadero Promenade and will activate and enliven the waterfront. In addition, the master lease with the Port will be unsubordinated to any financing obtained by the master tenant, and the responding party must therefore demonstrate the ability to

access equity and/or subordinate mortgage capital required to fund the necessary tenant improvements.

## II. THE SITE

The Site consists of the Roundhouse Building, which was constructed in 1913. Roundhouse One is a part of the three-building plaza, Roundhouse Plaza, centered around a pleasant garden courtyard and fountain. The Site consists of approximately 20,325 square feet of enclosed space. A plan is included in Appendix A. It was most recently used as office space and is currently vacant. The Site fronts on The Embarcadero and is within walking distance of the Bay, the Bay Bridge, the Ferry Building, Treasure Island, the East Bay and The Embarcadero. The Site is a designated City landmark (No. 114) and has been listed on the National Register of Historic Places since 1986. A copy of the Landmarks Preservation Advisory Board Statement of Significance is provided in Appendix I.

The Site is located on the Embarcadero, which was recently redeveloped to provide six (6) lanes of traffic, a light rail lane and an active pedestrian connection between the existing and planned waterfront and inland developments north and south of the Site (see "IV. Environs" for further description).

## III. SITE CONDITION

In 1999, the Port issued a Request for Proposal (RFP) for a ten (10) year lease of the Roundhouse Building. Following a review of three submitted proposals, the Port elected to award a ten (10) year lease to a radio station tenant. The radio station tenant took possession in the Spring of 2000 and commenced construction of a $3.5 million remodel of this 20,325 square foot historic facility. It was the tenant's intention to develop the facility as broadcast studios for up to twelve channels of clear channel satellite radio. Port staff estimates that approximately 80% of this work has been completed. Building plans for this uncompleted project are available for viewing at the Port's offices. Appointments for viewing may be made by contacting the Project Managers.

The Port of San Francisco has conducted an initial evaluation of the building superstructure. The result of the study is described below and a copy is provided in the Appendix B for background information purposes only is provided for the convenience of Respondents. Respondents are responsible for familiarizing themselves with all aspects of the Site to assess construction requirements and costs and to assure themselves that the information presented or referenced in the RFP is accurate and complete. The Port does not warrant or guarantee that the study represents an accurate or comprehensive survey of all conditions or code violations at the Site.

## IV. THE ENVIRONS

The Northeast Waterfront has undergone great change in the last 25 years. The striking series of pierhead and bulkhead buildings provide this area with a unique architectural,

historic and maritime character. The evolution of this area has changed the function of the Embarcadero from an industrial service road accessing the piers, to a beautified urban boulevard with enhanced public transit.

Along the Embarcadero, existing developments on Port seawall lots (west side of the Embarcadero) include the Francisco Bay Office Park between Sansome and Bay Streets (SWL's 315, 316, 317), Fog City Diner at Battery Street (SWL 319), and the landmark Belt Railway Roundhouse Building at Lombard Street (SWL 318, the Site). Developments outside of Port jurisdiction includes the Levi Plaza office and retail complex, and many office and design-related businesses in restored historic buildings along Battery and Sansome Streets. In addition, the inland area includes established residential enclaves at the foot of Telegraph Hill. This area, transformed from its industrial beginnings, in now regarded as a stable and desirable urban location.

Along the Embarcadero, many of the architecturally rich brick and concrete structures originally built for maritime and industrial operations have been renovated for modern office and retail uses, thereby preserving the character of the existing City-adopted Northeast Waterfront Historic District while establishing a strong economic base. The Roundhouse One Building has the potential to undergo such a transformation.

The Northeast Waterfront is located at the crossroads between the City's downtown district, North Beach and Chinatown neighborhoods, and Fisherman's Wharf. These areas rely heavily on the Embarcadero as a main point of access by visitors and residents alike.

## V. PROJECT DESIGN

The following items should be considered when approaching the project design. The design review process is discussed in "VII. Project Approvals".

Design. Proposed improvements must be consistent with the Waterfront Design & Access Element of the Waterfront Plan. Design criteria are set forth in this document, which may be purchased from the Port's Planning and Development Division. Relevant pages are attached in the Appendix.

Building Renovation and Public Access. Respondents must plan to renovate the building as necessary to achieve the Project Objectives, satisfy Building Code requirements, and comply with the Americans' with Disabilities Act (ADA). Any alterations to the exterior of the building should be minimized.

Historic Features. The Roundhouse was built in 1913. The property is a designated City landmark (No. 114) and is listed on the National Register of Historic Places. A copy of the Landmarks Preservation Advisory Board Statement of Significance is provided in Appendix I. The Building is an officially recognized historic resource that together with the historic piers on the Embarcadero, helps maintain the historic maritime character of the waterfront. The property could be creatively adapted to accommodate the acceptable

uses specified in this RFP. Consideration must be given to the retention of the architectural features of the building.

All proposals must be consistent with the Design Guidelines described in the Waterfront Plan and Design and Access Element. In particular, the architectural character of the structure must be maintained. Building signage should compliment the architectural character of the building. Flashing signs, for example, would not be permitted.

Parking. The Port discourages the use of any portion of the Site for off-street parking. Section 161(f) of the San Francisco Planning Code provides a mechanism whereby the Planning Department may consider a reduction in off-street parking requirements for projects such as this. Respondents are encouraged to discuss this issue with the Planning Department.

There are eight (8) public parking spaces on Sansome Street adjacent to the Roundhouse Building. Arrangements may be made with the Port for the use of some of these spaces for freight deliveries. There are other parking lots and garages in the vicinity. Interested parties are encouraged to contact the parking operators and garage owner to negotiate valet parking arrangements, if necessary.

## VI. PROJECT OBJECTIVES

The lease of the proposed project must address the following objectives:

- Maximize Port revenue from the site.
- Provide for the interior renovation of a vacant facility that conforms to the Secretary of the Interior Standards for Rehabilitation and Article 10 of the City's Planning Code and meets all current Building Code requirements, including separation of utilities from the adjacent office building at 10 Lombard Street, also known as Roundhouse 2.
- Provide a project consistent with the policies, standards and design criteria in the Waterfront Plan and the Waterfront Design & Access Element.
- Provide a user or users consistent with the applicable provision of the Waterfront Plan in a manner compatible with the surrounding area and users.

## VII. PROJECT APPROVALS

General office, community facilities, retail and restaurant uses proposed for the Roundhouse Building are included in the Waterfront Plan, which has been approved by the Port. Nevertheless, the specific plans for the Site may require various permits and approvals, and each prospective Respondent is responsible for determining which permits and approvals will be required for the construction and operations proposed at the Site, and for obtaining such permits and approvals. The following information is intended to help Respondents in this determination:

## Port of San Francisco

The Port Commission must approve Exclusive Negotiations with the selected Respondent and must approve the Lease and related documents for the lease of the Site. In addition, the Port will issue the building permits for the construction.

## San Francisco Board of Supervisors

The lease will be subject to Section 7.402-1 of the San Francisco City Charter that requires approval by the San Francisco Board of Supervisors for leases in excess of ten years or leases which required or One Million Dollars in total revenue to the Port.

## Design Review

The design of the project must be reviewed and approved by the Port and/or the Port's Waterfront Design Advisory Committee.

## Liquor, Food Service and Business Licenses

Respondents will investigate, and be solely responsible for obtaining, any liquor license(s) from the California Department of Alcoholic Beverage Control and any other required licenses from the City's Department of Public Health and Treasurer/Tax Recorder, and licenses required for proposed uses, such as cabaret or dance hall licenses from the San Francisco Police Department.

## Public Trust

Pursuant to the Burton Act (1968 Cal. Statutes, Ch. 1333), the State of California transferred the lands within the Port's jurisdiction to the Port as trustee. Under the Burton Act, the Port must use its lands consistent with the public trust for maritime commerce, navigation and fisheries, or, if the Port determines that any portion of the transferred lands is not required for such uses, then it may enter into leases for such development and use as the Port Commission finds to be in the public interest, with moneys derived therefrom to be used by the Port in the furtherance of commerce and navigation. Typically, public trust uses include maritime-related uses, including maritime office use, as well as specialty retail, restaurant, hotel use, historic preservation, open space and public access. Residential and general office uses have typically been held to be non-trust uses. The Port Commission has approved general office uses on an interim basis (usually for lease terms not exceeding 5 years), as incidental to other trust uses (e.g. to support historic rehabilitation of a structure), or upon a finding that a particular property is not required for public trust uses.

In approving the historic rehabilitation of the Roundhouse One building in 1982 for use as office space, the Port Commission in Resolution No. 82-32 found that the property is surplus to direct maritime strategy needs and is best utilized at it highest and best use as a commercial development in support of commerce, navigation and fisheries. However in selecting the successful respondent to this RFP and in negotiating and entering into any lease with such party, the Port Commission will consider the extent to which each proposed use would promote the public trust objectives as set forth in the Burton Act, and in the Waterfront Land Use Plan.

## VIII. ENVIROMENTAL REVIEW

The selected developer may be required to submit and Environmental Evaluation application to the San Francisco Planning Department particularly if the project involves a change or intensification of use. Additionally, environmental review may also be required for projects that propose to alter the structure because it is a designated City Landmark and listed on the National Register of Historic Places and is officially recognized as an historical resource under the California Environmental Quality Act (CEQA).

All applicable requirements of CEQA must be met before the Port Commission or Board of Supervisors authorizes the project and /or executes a lease. Likewise, CEQA review of the project must be completed prior to the authorization of building permits by the Port for interior or exterior alteration of the structure. Additionally, permits for alteration and construction to the exterior of the landmark structure require authorization of a Certificate of Appropriateness by the Planning Department, or Planning Commission, upon receipt of the advice and recommendation of the Landmarks Preservation Advisory Board.

## IX. PROPOSED RENT AND KEY LEASE TERMS

The actual terms of the lease will be negotiated with Port Staff and are subject to final approval by the Port Commission and the San Francisco Board of Supervisors.

### Base Rent

Rather than set a minimum base monthly rental rate, the Port is requiring Respondents to propose a base monthly rate comparable to like situations in the market. Rental adjustments must also be proposed. A period of rent abatement for the purpose of constructing improvements may be included.

### Percentage Rent

If applicable, proposals must include a Percentage Rent payable to the Port on gross receipts for food, beverages and merchandise. Percentage Rent may also be proposed on other revenue streams such as office rents from subtenants. The percentage rent rate is not being dictated by the Port but should be comparable to like situations in the market.

The higher of the Base Rent or the Percentage Rent would be payable to the Port. In any month in which the Percentage Rent does not exceed the Base Rent, only the Base Rent would be payable to the Port.

## Term

Proposals must include a proposed initial term plus option periods, if any, which shall be the minimum length practicably based on the cost and financing of tenant and building improvements and comparable situations in the market.

## Capital Investment

Proposals must include descriptions of proposed capital investments and the anticipated level of proposed capital investment.

## Form of Lease

The successful Respondent will be required to enter into a lease to be negotiated by and between the Port and Respondent during the period of exclusive negotiations. A copy of the Port's standard form lease is attached hereto as Appendix E (the "Form of Lease") as an example of the Port's standard lease requirements. However, the final lease may be substantially different to: a) reflect the business terms negotiated between the successful Respondent and the Port; b) incorporate any City requirements adopted after the drafting of the Form of Lease; and c) incorporate any other provisions desired by the Commission or negotiated by the parties.

## City Requirements

The NNN Form of Lease attached as Appendix F requires the tenant to comply with all City requirements in effect, including without limitation: (1) Non-Discrimination in Contracts and Property Contracts (including providing equal benefits) (SF Admin. Code Section 12B and C); (2) Tropical Hardwood and Virgin Redwood Ban (San Francisco Admin. Code Section 12I); (3) Health Care accountability/San Francisco Admin. Code Section; (4) MacBride Principles – Northern Ireland (San Francisco Admin. Code Section 12F); (5) Tobacco Products Advertising Ban (San Francisco Admin. Code Section 4.20); (6) San Francisco Integrated Pest Management Program (San Francisco Admin. Code Section 39.1); and (7) First Source Hiring/San Francisco Admin. San Francisco Administrative Code §83.1 et.sq. The lessee for a restaurant with more than 50 employees will also be required to comply with the Employee Signature Authorization Ordinance (Sections 23.31-23.35) which requires employers of employees in restaurant projects on public property with more than 50 employees to enter into a "card check" agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative. Copies of those requirements are attached as Appendix H.

As part of the Bid Package, all Respondents must submit a written acknowledgement in the form attached hereto, that it has reviewed, understands, and can comply with the City Requirements set forth in Section 29 of the Form of Lease, and other terms and conditions set forth in Section IX hereof.

Additional information regarding Human Rights Commission (HRC) requirements can be found in the attached memorandum to prospective tenants of the Port, or by calling Preston Tom or Selormey Dzikunu at (415) 274-0498 or (415) 274-0511. The Port strongly encourages small, local, woman and minority owned businesses to bid, either as a sole bidder or as a joint venture.

Prevailing Wages. Respondent hereby acknowledges that it has read and understands Section 6.22 of the City's Administrative Code and agrees that the Lease Agreement shall be subject to and Tenant shall comply with all obligations and requirements imposed by that section. In connection therewith, Tenant (and any of its subcontractors under this Lease Agreement) shall pay its employees wages in an amount at least equal to the highest general prevailing rate of wages as paid for similar work in the City and County of San Francisco in private employment, as fixed and determined by the Board of Supervisors pursuant to Section 6.22 of the City's Administrative Code. Tenant (and any of its subcontractors under this Lease Agreement) shall also keep, or cause to be kept, an accurate record showing the name, place of residence, citizenship, occupation and per diem pay of each person engaged by Tenant in the execution and performance of this Lease Agreement. Such records shall at all times be open and available to the Port and its duly authorized agents for inspection and examination.

Additional information regarding highest general prevailing wage rates may be obtained by contacting the Civil Service Commission at (415) 252-3247.

## X. EVALUATION OF PROPOSALS

### Selection Criteria

The Port will select a Respondent with whom to enter into exclusive negotiations. The Respondent must have the demonstrated ability to deliver a development project that meets the Port's Project Objectives. The Port will use the following criteria in evaluating the responses to this Request for Proposals:

A. Economic return to the Port based on Base Rent and Percentage Rent proposed by Respondent.

B. Financial viability of the proposal based on adequacy of projected revenues to support the investment, reasonableness of the cash flow analysis, and proposed capital investment for improvements.

C. Experience and organization of the Respondent's team based on clear lines of authority and assignment of responsibilities, demonstrated responsiveness and

decisiveness, and overall qualifications and availability of key individuals of the Respondent's team, economic success of similar ventures, relationships with other similar operators, ability to implement development and or leasing projects quickly and effectively, and ability to work constructively with City and community representatives.

D. Experience and reputation of the operator based on the operator's breadth of experience in public/private or private ventures, quality and success of other retail/restaurant/office/community facilities ventures over time, uniqueness of other ventures, and ongoing management of retail/restaurant/office/community facilities operations.

E. Quality, uniqueness, and potential for success and successful fit of the use concept based on the type and character of project proposed, targeted clientele, appeal to a diversity of users, compatibility with the neighborhood's setting, and the extent to which the proposed uses would promote the public trust objectives as set forth in the Burton Act and in the Waterfront Land Use Plan.

F. Experience and qualifications of design consultants (engineer, architect, landscape architect, interior designer, etc.) based on their experience on projects with similar site characteristics, reputation for flexibility and responsiveness to public and community concerns, compatibility of designs with setting, especially with nearby historic resources, success in integrating indoor and outdoor settings, and experience with design review processes of the City.

G. Quality of conceptual design for proposed tenant improvements based on conceptual design and space layout, relationship of the design to the Embarcadero Roadway and Promenade, sensitivity to and integration with adjacent historic properties, the minimum amount of alteration to the building exterior, enhancement of views to, from, through and around the building, success in meeting design criteria in the Waterfront Plan and its Design and Access Element (see Appendices C and D).

H. Financial capacity and plan of the Respondent based on ability to fund preliminary design and predevelopment costs and ability to raise and commit capital for construction, start up operations, and continuing operations and maintenance.

I. Financial viability of the proposal based on adequacy of projected revenues to support the investment, reasonableness of the cash flow analysis, and proposed capital investment for improvements.

J. Term of Lease based on minimum term required to support cost of proposed improvements and comparable situations in the market.

K. Description of Capital Investment: Proposals must include descriptions of proposed capital investments and the anticipated level of proposed capital investment.

## Evaluation and Determination

Port staff and other appropriate parties will evaluate the required submittals of each Respondent based on the Selection Criteria. A selection panel may assist Port staff with this review, and public presentations may be required. In addition, Port staff may, at its sole discretion, independently investigate the qualifications of certain Respondents and/or conduct interviews with members of certain Respondents' team. The Port staff reserves the right to request clarification or additional information from a Respondent.

## Exclusive Negotiations

After evaluation and determination of the most qualified Respondent(s), Port staff may recommend that the Port Commission authorize staff to enter into exclusive negotiations with a single Respondent. A standard form of the Exclusive Right to Negotiate that the successful Respondent will be required to enter is attached hereto as Appendix H. Upon Port Commission authorization of exclusive negotiations, the selected Respondent must submit a $25,000 non-refundable fee (inclusive of the Earnest Money Deposit described below) for a two (2)-month period of exclusive negotiations during which:

- A lease agreement and related documents for the lease of the Site and construction of tenant improvements in a final form approved by the San Francisco City Attorney will be negotiated incorporating specific terms including, but not limited to, the Port's and lessee's responsibilities, the economic parameters, construction standards and requirements, and a performance schedule;
- The selected Respondent will complete its "due diligence" review of the Site, finalize financial projections, and complete preliminary plans including, but not limited to floor plans, elevations, and renderings; for the Site,
- The selected Respondent, with the Port's assistance, will complete the project approval processes and any required supplemental environmental review.

The period of exclusive negotiations may be extended solely at the Port's option. The fee for extending the period for exclusive negotiations will be Five Thousand Dollars ($5,000.00) per month payable in advance.

## Schedule

The schedule for selection is as follows:

- Issuance of RFP: **December 17, 2003**
- First Pre-proposal Conference & Site Tour: **March 3, 2004, 1:00 p.m.**
- Submittal of Proposals Due: **April 28, 2004, 1:00 p.m.**
- Staff review and evaluation of proposals and interviews: **April 29 – May 29, 2004**
- Staff recommendation to Commission regarding Exclusive Negotiations: **June 8, 2004**
- Exclusive Negotiation Period: **June 9 – August 29, 2004**

## Contact for Information

Any questions from potential Respondents regarding this Request for Proposals should be submitted in writing to: Phil Williamson or Jeffrey A. Bauer, Project Managers, Port of San Francisco, Pier 1, San Francisco, CA 94111, or to Fax Number (415) 732-0453. Such written questions will be responded to either orally at the Pre-submittal Meeting or, if received after the Pre-submittal Meeting, in writing with copies to all potential Respondents who register at the Pre-submittal Meeting. Oral inquiries will not be accepted, except at the Pre-submittal Meeting.

## Submittal Requirements

Five (5) numbered sets of the information requested below shall be submitted to the Port, with the exception of Financial Capacity materials (Item F below), two (2) copies of which are to be submitted to the Port under separate cover. In accordance with the Sunshine Ordinance (Section 67.24(e) of the San Francisco Administrative Code), all responses and other communications from interested parties shall be open to inspection by the public upon request, immediately after a contract is awarded. Financial Capacity materials submitted by a Respondent will be kept strictly confidential until and unless that Respondent is awarded the opportunity.

## Submittal Format

Information provided must be submitted with the following format, identifying each item by letter and number.

### A. Experience of Respondent's Team

A.1 Identify the type of legal entity which would contract with the Port, including any and all joint venture/limited partners and percentage interests and capital/equity committed to the entity.

A.2 Describe the intended role of each partner in the implementation of the lease and improvements and the responsible entity in the organizational structure for various construction and leasing activities and the ongoing property management.

A.3 Describe the role and provide resumes describing the relevant experience and qualifications of the project manager and key members of Respondent's team identified in A.2 above who would implement this project. Give the name, telephone number and address for at least three (3) business references. The Port may, but is not obligated to, contact any or all of these references.

A.4 Describe the key consultants and relevant experience, including but not limited to financial, marketing, engineering, and architectural/design consultants.

A.5 Identify, describe, and provide photographs of no more than three (3) other similar ventures, including the financial and other types of participation of each member of the Respondent's team in each venture over time (include location, size, type of operation, project cost, sources of capital, success over time, current management/owner).

A.6 Provide a timeline from exclusive right through negotiation period to construction and beginning of operations.

B. Experience of Operator

B.1 Identify the qualifications of all persons who will play a significant role in the proposed operations, including their duties, years of experience, names of other establishments where they have worked and any other relevant information. Resumes may be included.

B.2 Describe no more than 3 comparable establishments owned, leased or operated by the Operator. Describe each site's use, size, and type of operation, business concept, location (address); gross annual revenues received over time; years of operation; ownership interest; and any other relevant information. Provide photographs if available.

B.3 Give the name, telephone number and address for at least three (3) business references. The Port may, but is not obligated to, contact any or all of these references.

C. Leasing Concept

C.1 Describe the uses and type of operation proposed. If a restaurant is proposed, include the ambiance to be created, menu items or sample menus and price ranges.

C.2 Describe the retail merchandise (if any).

C.3 Describe how the proposed uses will complement the neighborhood.

C.4 Describe the management and operational structure of the business, staffing and business hours.

C.5 Describe the Business Plan for start-up and marketing.

D. Experience and Qualifications of Design/Engineering Consultants

D.1 Describe the relevant experience of each member of the Respondent's design team (architect, historic architect, landscape architect, interior designer, etc.)

D.2 Give the name, telephone number and address for at least (3) references who can address each member of the Respondent's design team's flexibility and responsiveness to public and community input.

D.3 For each member of the Respondent's design team, provide photos, sketches and other materials of no more than three (3) other relevant design ventures, particularly those with similar settings.

E. Conceptual Design for Improvements

E.1 Provide conceptual design sketches for improvements to be installed including site plan, floor plan, elevation and perspective renderings.

E.2 Provide a narrative description of the design concept.

E.3 Show the general relationships of the improvements to the adjacent Embarcadero Promenade, Sansome Street and buildings. Demonstrate how indoor and outdoor space would be utilized and integrated with the Embarcadero Promenade and adjacent structures.

E.4 Show all pedestrian and vehicular ingress and egress points, and areas for loading and unloading of passengers and goods.

E.5 Illustrate views to, from, through and around the project.

E.6 Describe the materials to be used and indicate their application in the conceptual design.

E.7 Describe compliance with applicable standards for historic preservation.

F. Financial Capacity and Plan

Evidence of access to equity capital and financing resources to carry out proposed project, supported by:

F.1 The most recent available credit report and audited financial statements for the past 4 years of each principal partner and joint venture participant, including statement of changes in financial position and statements of any parent organizations and any materially relevant subsidiary units, identifying any projects with negative cash flows, amount of developer's recourse debt, any non-performing loans, and the amount of guarantees and/or contingent liabilities;

F.2 Composition of current business portfolio, listing the following for each project: project name, type, location (city, state), date completed, project size (rentable area), value, debt, role (developer, restaurant manager, etc.), ownership interest;

F.3 Recent history (last 2-3 years) in obtaining financing commitments, detailing type of project, financing source, amounts committed, etc.;

F.4 List of projects in the pipeline including status, development schedule and financial commitment required of developer;

F.5 Source of equity and/or subordinate mortgage capital for funding the proposed Project, use of capital in building/improving the proposed project.

Explain the following:

F.6 How the entity will be capitalized;

F.7 Sources of financing for the initial physical improvements to be installed at the Site; and

F.8 Sources of working capital to cover operating costs and to adequately maintain operations at a high level from the start-up period through seasonal variations in revenue production.

## G. Economic Return to the Port

G.1 Base Rent proposal

G.2 Percentage Rent proposal

## H. Financial Viability of the Proposal

H.1 Proposed capital investment for improvements

H.2 Cash flow projections showing revenue by type, operating expenses, net operating income, debt service and net cash flow

## I. Diversity Program

Identification of local, minority and women-owned businesses that may participate in design, construction, and operation of the leasing development.

## J. Earnest Money Deposit

Earnest Money Deposit in the amount of Twenty-Five Thousand Dollars ($25,000.00) payable to the Port in the form of a cashier's or certified check. This deposit shall be returned to all Respondents except the Respondent with whom the Port enters into exclusive negotiations.

K. Statement of Ability to Comply with City Requirements and Agreement to Conditions

A "Statement of Ability to Comply with City and Other Governmental Requirements and Agreement to Conditions" the form of which is attached as Appendix G, signed by an authorized representative of the Respondent.

**Submittal Deadline**

**Submittals must be delivered by hand to the Port of San Francisco, Pier 1, San Francisco CA 94111, no later than 1:00 P.M. PST on April 28, 2004.**

All responses must be addressed to the attention of Phil Williamson, Project Manager, and marked "Request for Proposals: Roundhouse Building."

## XI. OTHER TERMS AND CONDITIONS

- The Port will convey the Site to the lessee in an "AS IS" condition. It shall be the sole responsibility of the lessee to investigate and determine conditions of the Site, including but not limited to existing and planned Roadway Project improvements, utility connections, and the suitability of such connections for the improvements to be constructed by the lessee.

- The information presented in this Request for Proposals and in any report or other information provided by the Port is provided solely for the convenience of the interested parties. It is the responsibility of interested parties to assure themselves that the information contained in this Request for Proposals or other documents is accurate and complete. The Port or its advisors provide no representations, assurances, or warranties pertaining to the accuracy of such information.

- The issuance of this RFP does not constitute an agreement by the Port that any contract will actually be entered into by the Port Commission. The Port expressly reserves the right at any time to:

  (a) Waive any defect or informality in any response, proposal, or proposal procedure;

  (b) Reject any or all proposals;

  (c) Suspend any and all aspects of the process indicated in this RFP;

  (d) Reissue a Request for Proposals;

  (e) Request some or all Respondents to submit revised or new bids;

  (f) Select a tenant by any other means;

(g) Offer new opportunities for community facilities, retail (including restaurants) and general office in the area at any time;

(h) Extend deadlines for accepting proposals, or accept amendments to proposals after expiration of deadlines; or

(i) Determine that no project will be pursued.

- The Port reserves the right to reject any or all proposals submitted and to waive any technical defect in a submittal which does not affect or alter the substantive provisions thereof. Failure by the Port to object to an error, omission, or deviation in any proposal will in no way modify this RFP or excuse Respondent from full compliance with the requirements of this RFP or the Lease.

- In awarding this opportunity and finalizing the lease, the Port may modify, refine, and otherwise clarify the permitted uses to reflect the selected proposal, with such changes therein as may be desired by the Port provided that such changes shall not change the overall substance of the proposal.

- The Port may modify, clarify, and change this RFP by issuing one or more written addenda. Such addenda may be sent by regular first-class United States mail to the last known business address of each potential Respondent receiving a copy of this RFP. The Port will make reasonable efforts to notify Respondents in a timely manner of modifications to this RFP. Notwithstanding this provision, each Respondent assumes the risk of submitting its proposal on time.

- Granting of an exclusive right to negotiate should not be construed as an approval of the proposed uses, configuration or design of the project.

- The lessee shall be responsible for obtaining all government approvals required for the development of the Site, and the lessee shall pay all permit and processing fees related to the development. Approvals for the project are likely to be required from governmental agencies other than the Port. In issuing this Request for Proposals, the Port makes no representations or warranties about which government approvals will be required, or that the necessary governmental approvals can be obtained which will allow the development of the Site in accordance with the guidelines set forth above. Respondents should understand that the Port is issuing this Request for Proposals in its capacity as a landowner with a proprietary interest in the project and not as a regulatory agency of the City and County of San Francisco ("City") with certain police powers. The Port's status as an agency of the City shall in no way limit the obligation of the lessee to obtain approvals from City departments, boards or commissions which have jurisdiction over the project.

- The Port will not pay a Finder's or Broker's Fee in connection with this Request for Proposals.

- In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractor's bids, leases, agreements, responses to RFQ's and RFP's and all other records of communications between the Port and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualifications for the lease, until and unless that person or organization is awarded the lease. Except as limited by this paragraph, information described by this paragraph will be made available to the public upon request. Except as limited by this paragraph, the Respondent's proposal will become the property of the Port and may be used by the Port in any way deemed appropriate.

- The Port accepts no financial responsibility for any costs incurred by a Respondent in responding to this RFP.

## XII. Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Port of San Francisco does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

John Paul Scott, Port of San Francisco, Pier 1, San Francisco, CA 94111, has been designated to coordinate and carry out the Port's compliance with the nondiscrimination requirements of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator.

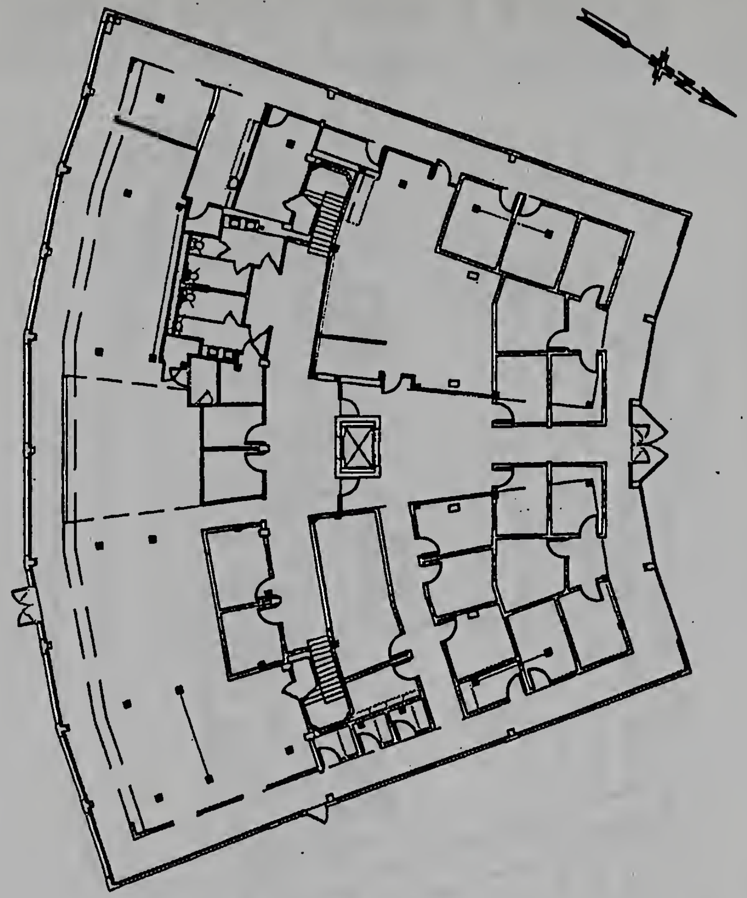
PORT OF SAN FRANCISCO

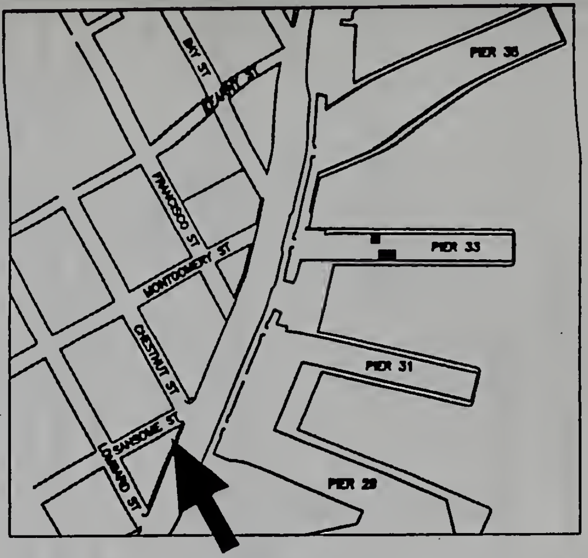
# APPENDICES

# TO

# REQUEST FOR PROPOSALS
# LEASING DEVELOPMENT DEVELOPMENT
# ROUNDHOUSE

# APPENDIX A




PIER 35
PIER 33
PIER 31
PIER 29
BAY ST
KEARNY ST
FRANCISCO ST
MONTGOMERY ST
CHESTNUT ST
SANSOME ST
LOMBARD ST

LOCATION PLAN

## ROUNDHOUSE ONE – 1500 SANSOME STREET

FIRST FLOOR, – AREA = 11,639 S.F.

LEASE NO.
XXXXX

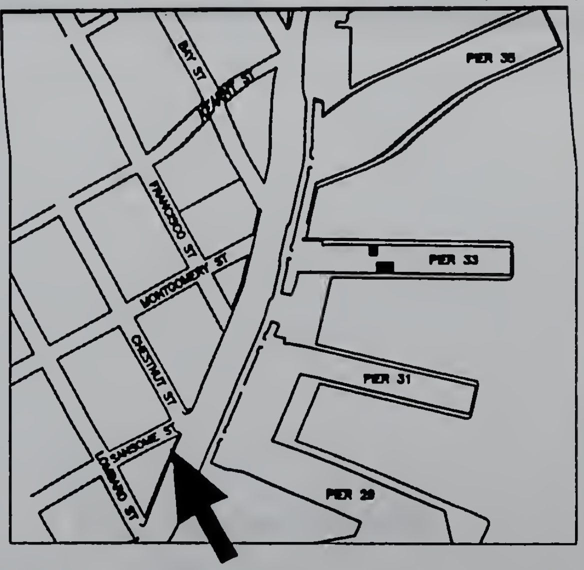
SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO

TENANT:
XXXXX

DRAWN BY: S. CHU
DATE: DEC. 4, 2003
CHECKED BY:
SCALE:
PLACE CODE NO. 3180-1-0000
SHEET NO. OF SHEETS

g:\Property Files\Lease Maps\EXHIBITS-BLDGS\RHBASE-FLOOR1

# APPENDIX A


PIER 35
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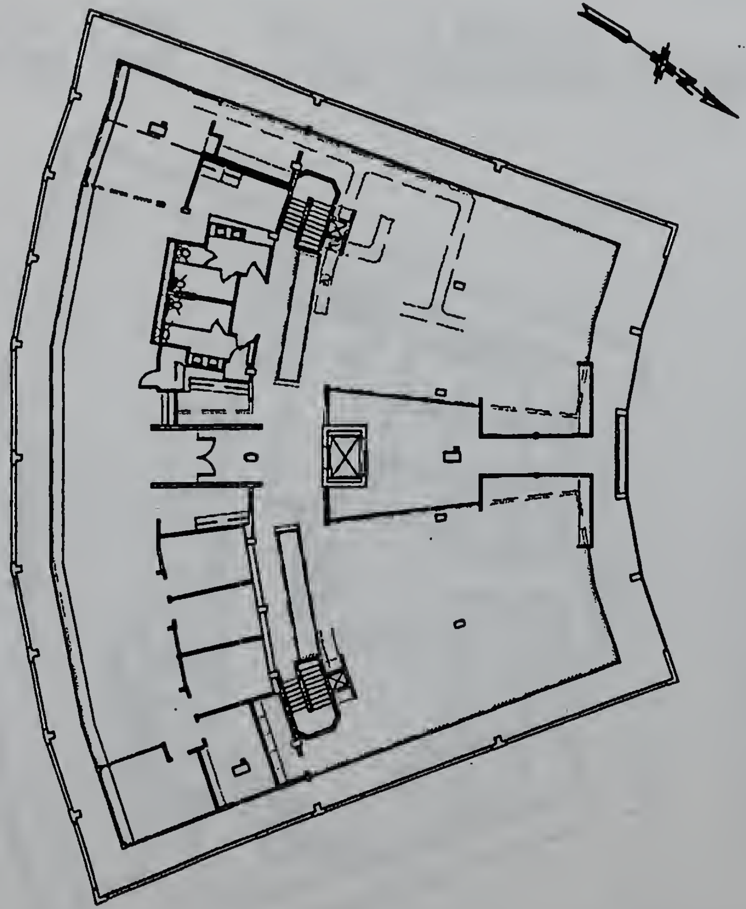
SANSOME ST
LOMBARD ST

LOCATION PLAN



## ROUNDHOUSE ONE – 1500 SANSOME STREET

SECOND FLOOR – AREA = 8,686 S.F.

| | | | |
|---|---|---|---|
| LEASE NO.<br>XXXXX | SAN FRANCISCO PORT COMMISSION<br>PORT OF SAN FRANCISCO | TENANT:<br>XXXXX | DRAWN BY: S. CHU · DATE: DEC. 4, 2003<br>CHECKED BY: · SCALE:<br>PLACE CODE NO. 3180-2-0000 · SHEET NO. OF SHEETS |

# APPENDIX B

# PORT OF SAN FRANCISCO

# MEMORANDUM

**TO:** Port Deputy Directors **DATE:** 12-03-03

**FROM:** Uday Prasad

**SUBJECT:** Rapid Structural Assessment—Round House Building located at 1500 Sansome Street

cc: Ed Byrne Joe Roger Tony Grieco

In accordance with the Port's Facility Assessment Notification Protocol, this message transmits to you the Rapid Structural Assessment for the Round House Building located at 1500 Sansome Street. Attached to this memo is the Rapid Assessment form for this building. This Rapid Structural Assessment was conducted in response to a special request from Port's Real Estate Department.

## Background

The Round House Building is a two-story reinforced concrete building built around 1913.

In 1999 Port issued a RFP for a 10-year lease and selected Radio Station tenant. The tenant took the possession of the building in the spring of 2000 and commenced construction of a 3.5 million dollar remodeling (Port Permit No. 5913) to develop the facility as a broadcast studio for satellite radios. Due to economic reasons the tenant could not complete the work and abandoned the project after completing about 80% of the work. As a result of tenant bankruptcy the Port officially terminated the lease in 2002.

## Summary of Findings

The main structural elements (beams, columns, slab and exterior walls) appear to be in sound condition and hence has been given green rating. The building also has new seismic steel bracing installed as part of the tenant remodeling work described above. However, the building under current condition is not suitable for any kind of occupancy. It is full of building material, debris and supplies; lacks amenities; does not have functioning restrooms, elevators. The existing stairway and 2nd floor openings do not have guardrails. There is need to finish the various mechanical, electrical, plumbing and architectural works which were part of the tenant remodeling work described above before allowing any kind of occupancy for this facility.

# BUILDING RAPID EVALUATION SAFETY ASSESSMENT FORM

**Building Description:**
**Name:** Round House

**Facility Code/Location:** 1500 Sansome Street
**No. of Stories:** 1
**Construction:** Wood Concrete XX Steel XX
Masonry Combination
**Support:** Over Water
On Land XX
**Occupancy:** Commercial Office XX Industrial
Assembly Residential Emergency Serv.
Other.

**Overall Rating:**
INSPECTED (Green) XX
REQUIRES REVIEW (Yellow)
UNSAFE (RED)

**Inspector Name: UPR**
**Affiliation:** Port
**Inspection Date (M/D/Y):** 11-25-03
**Time: PM**

**Condition Assessment**

| **Condition** | Yes | No | More Review Needed | **Comments** |
|---|---|---|---|---|
| 1) Collapse, partial collapse, off foundation | | X | | The main structural elements of the building appear to be in sound condition. However, the building under current condition is not suitable for occupancy. It is full of building material, debris and supplies; lacks amenities-does not have functioning restrooms, lights, elevators; The existing stairway and 2nd floor openings do not guardrails. |
| 2) Major building element significantly damaged | | X | | |
| 3) Severe cracking of walls, obvious distress | | X | | |
| 4) Parapet or other falling hazard | | X | | |
| 5) Severe ground or slope movement present | | X | | |
| 6) Other hazard present | X | | | |

**Recommendations:**

| | |
|---|---|
| | No further action required |
| | Detailed Structural evaluation required: |
| | Detailed Geotechnical evaluation required: |
| | Barricades required in the following areas: |
| X | Other: There is need to finish various mechanical, electrical, plumbing and architectural works which were part of the tenant remodeling work (permit no.5913) before allowing any kind of occupancy for this facility. |

**Comments:**

Photos Available: Yes___X____ No____

Photo 1-East Elevation of Round House

Photo 2-Back elevation of Round House

Photo 3—Front Elevation of Round House

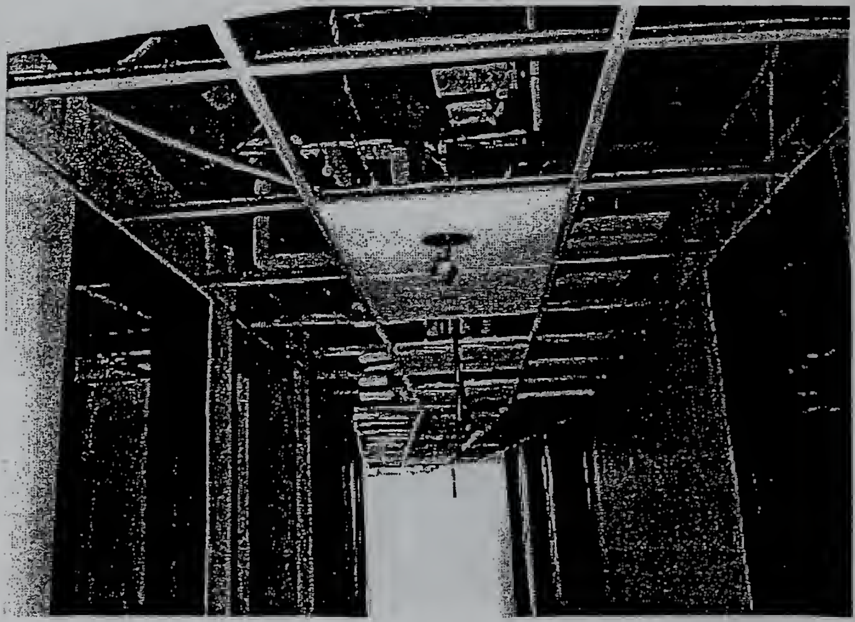


Photo 4—Unfinished ceiling, electrical and partition work, typical throughout

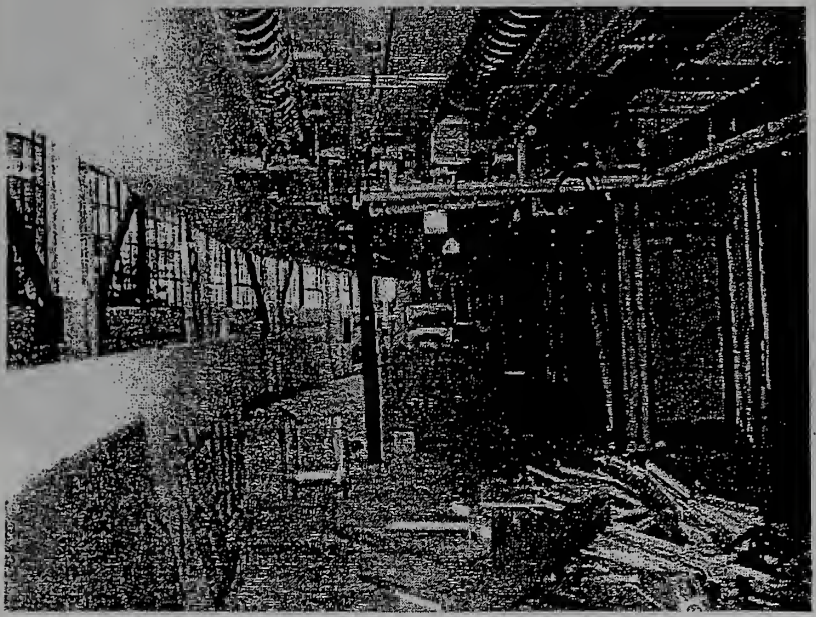


Photo 5—Unfinished work, building material, debris, typical throughout

Photo 6—New Seismic Steel Bracings, typical along exterior walls

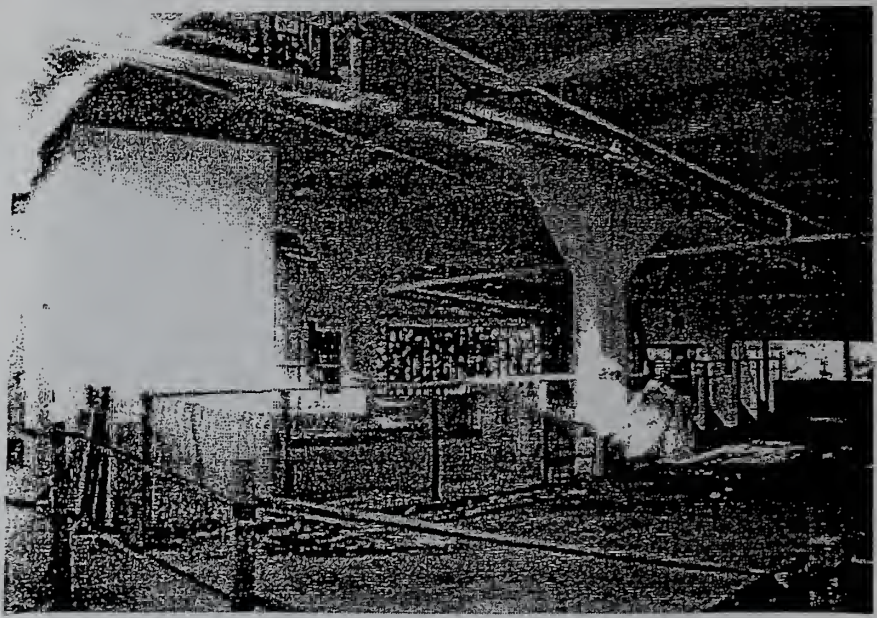


Photo 7—2nd Floor of the building, unfinished work typical throughout

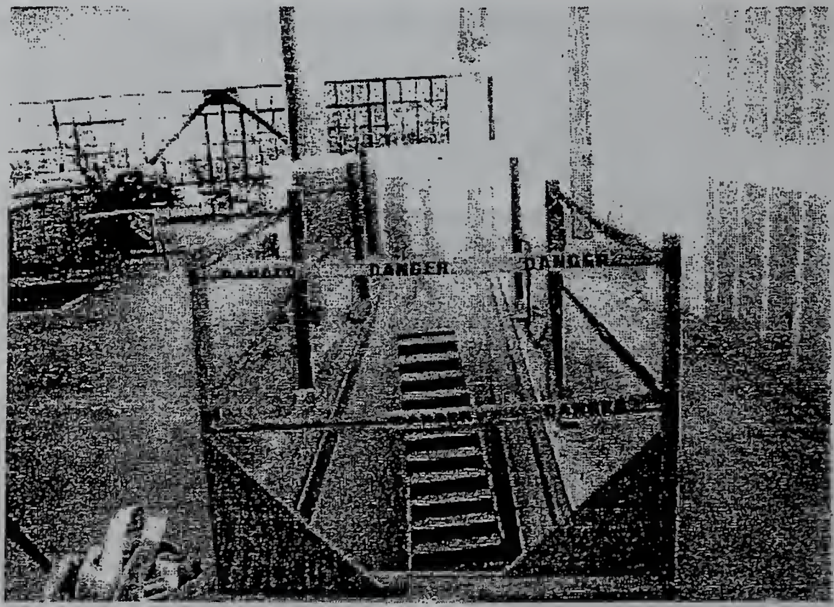

DANGER
DANGER
DANGER
DANGER
DANGER

Photo 8—Unfinished guardrails around 2nd floor openings

Photo 9—Non-functional restrooms

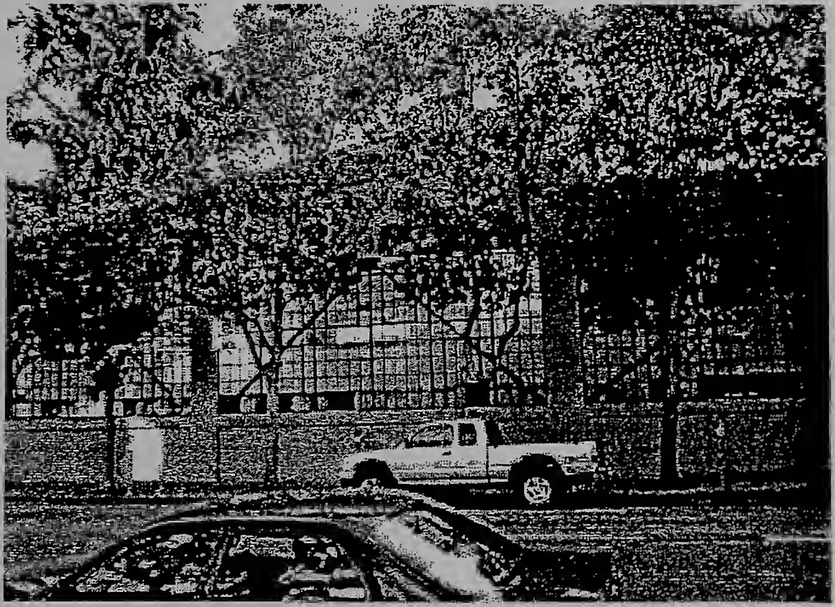


Photo 10—West Elevation of the Round House

# APPENDIX C

## Excerpts from the Port of San Francisco Waterfront Land Use Plan

Please note that the full document is available for viewing
at any time during normal business hours from 8 am to 5 pm
at the Port offices in Pier 1, San Francisco, CA 94111.
Please contact Floristine Johnson (415-274-0526).

# Port of San Francisco
## Waterfront Land Use Plan

Republished version, January 2000

This Publication includes:
- Final plan adopted by the Port Commission, Resolution No. 97-50, June 1997.
- South Beach "Good Neighbor Standards Amendments," Resolution No. 98-09, January 1998.
- Mission Bay Amendments, Resolution No. 98-89, September 1998.

**Deletions from prior text are shown by ~~strikeouts~~,**
**and Additions by double underscores.**

## SUPPLEMENTAL APPENDIX A

# AMENDED EXCERPTS FROM THE PORT OF SAN FRANCISCO WATERFRONT LAND USE PLAN

**Please note:**

The Port recently reprinted ~~is in the process of reprinting~~ the Waterfront Land Use Plan ~~as amended~~. The excerpts that follow are from the January 2000 republished version ~~pre-publication version~~ of the Plan. Certain sections, highlighted herein by brackets, were amended by action of the Port Commission on July 20, 2000. The relevant amendments are provided at the end of this Supplemental Appendix A. Potential respondents to the Amended RFP are encouraged to review the entire Waterfront Land Use Plan and July 20, 2000 amendments to ensure they fully understand the policies and objectives applicable to the Pier 27-31 Recreation Project.

To arrange to review the full January 2000 republished ~~pre-publication~~ version of the Waterfront Land Use Plan and the full set of July 20, 2000 amendments to the Plan, or to purchase a copy for $10.00, please contact Floristine Johnson ~~Carla Bagneschi~~ in the Port's Planning and Development Division at (415) 274-0526 ~~274-0638~~.

# Prologue

*The Northeast Waterfront*

**San Franciscans are justifiably proud of their City, not only for its natural beauty, but also because of the tremendous civic endowments bestowed by prior generations. Through the forethought of our ancestors, we enjoy the splendor of Golden Gate Park, the grand design and monumental architecture of the Civic Center, the expansive views from Coit Tower, and the diversity of our neighborhoods. Living in the midst of these many gifts has inspired each successive generation to make contributions to the civic good. For the most part, however, past generations have turned their backs to the waterfront, not out of a lack of appreciation, but because it functioned almost singularly as a place of industry. Although the grand arches of the bulkhead buildings are meritorious contributions to our architectural heritage, they were built, in part, to obscure the gritty reality of work on the waterfront. The Ferry Building alone stands out as a major civic improvement on the waterfront, constructed as a gateway to usher visitors in and out of the City.**

San Franciscans now have the opportunity to look anew at their waterfront. Sweeping changes in the technology of transportation and commerce have opened the water's edge to new possibilities.

We all cherish the memories of the Bay alive with the sights and sounds of waterborne commerce—ships vying for a berth at the piers, cargoes piled high on their decks awaiting the able hands of longshoremen, and workers and sailors plying their trades up and down The Embarcadero. Most of these activities can still be seen along the waterfront, although modern efficiencies have reordered the way they occur. One container ship carries the load of numerous clipper ships; one crane does the work of countless longshoremen. Bridges and freeways have replaced ferries and barges in conveying people and goods throughout the region. These trends not only affect San Francisco, they also have led to waterfront evolutions in cities like New York, Boston, Seattle, Baltimore and Portland. Instead of lamenting the changes brought about by these innovations, San Francisco tradition dictates that we seize this opportunity to re-create a waterfront which will instill pride in future generations.

Development of this Waterfront Land Use Plan came at a propitious moment in history. Through citizen activism, San Francisco's waterfront has survived the days when "bigger is better" was the catch phrase of new development, and the Bay was viewed as an obstacle to construction. Today, the importance of citizen participation, environmental protection, historic preservation, and design review is well established, providing the critical foundation for a sensitive and successful waterfront revitalization.

This effort, perhaps unlike others before it, will also be aided by a new pragmatism in civic improvement efforts, brought on by the recognition that our financial resources must be as carefully managed as our natural resources. Gone are the days of federal and state grant programs flush with funds for public improvements such as grand parks and open spaces. Local voters no longer can support additional taxes for every worthy cause.

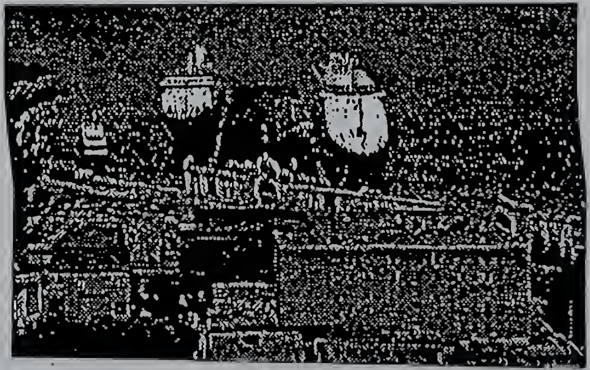
The Port of San Francisco is an unsubsidized, self-sufficient operation and so, if the transformation of the waterfront is to be realized, the Plan must be implementable in the same way. The visions for a new waterfront are no less grand because of this limitation; however budget consciousness will dictate that the vision be achieved incrementally. Facilities which cannot be transformed immediately can nevertheless contribute to the effort through the revenue generated by interim uses. Now that San Franciscans have achieved consensus on the land use plan, the certainty that is a precondition to reinvestment and revitalization will attract private capital.

As a result of six years of dedication and hard work by citizens who have served on the Waterfront Plan Advisory Board and attended Advisory Board and Port Commission public meetings and workshops, and by the staff of the Port, the Planning Department and other agencies, the Port has adopted this Waterfront Land Use Plan which will guide revitalization and reinvestment in the waterfront. Embodied in the Plan's proposed goals, policies, objectives, land use classifications and development standards, is the new vision for San Francisco's waterfront. As you read this, we ask you to imagine:

a place for waterborne commerce and world trade
recreational water use
neighborhood residents
waterborne transit
architectural heritage
recalling our colorful waterfront history
celebrating our cultural diversity
public assembly
economic opportunity
promenading along the Bay
nourishment of mind and body
nature and open space
a place for...

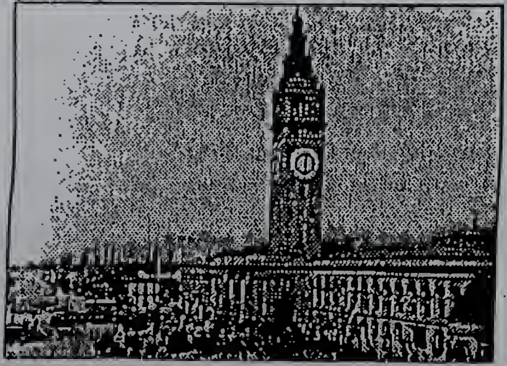
If we can imagine these places, then we can achieve this vision together, and create a waterfront for all San Franciscans to enjoy and proudly call their own.

NORTHEAST WATERFRONT
Improve public access and circulation



*Pier 35 Passenger Cruise Terminal*

**The Northeast Waterfront.** The Northeast Waterfront extends from Pier 35 to Pier 7 at the foot of Broadway. The Plan seeks to maximize opportunities for retaining maritime operations in this area. The Plan therefore protects existing cargo-related operations at Piers 15-17, 19-23 and 27-29, but recognizes that the likely consolidation of these operations in the southern waterfront will open these piers to other maritime businesses such as excursion boats, historic ship berthing, and recreational boating and water use. These new maritime uses will likely develop in conjunction with new mixed use projects. Another important objective is to activate this area with an array of day and nighttime uses which will appeal to San Franciscans and visitors alike. The Plan proposes numerous commercial and public uses that could be combined with new commercial and recreational maritime activities to enliven and increase public enjoyment in the area. Other objectives guide new development to protect and enhance the historic maritime character of the area, highlight the area as a gateway to North Beach, Chinatown, and Fisherman's Wharf, and provide public access amenities which highlight newly created points of interest.



*The historic Ferry Building*

**The Ferry Building Waterfront.** The Ferry Building Waterfront is the focal center of the waterfront, extending from the Pier 5 pierhead/bulkhead building to the site of the future Rincon Point Park at the south end of the Embarcadero Promenade. A central objective for this area is the preservation and restoration of historic structures, particularly the Ferry Building and former U.S. Agriculture Building which are listed on the National Register of Historic Places. The area objectives promote waterborne commute and recreational travel and enjoyment, and the restoration of the area as a major intermodal transit center for the City. To complement existing and new ferry, excursion boat, water taxi, historic ship and recreational boat moorings, other commercial and public uses are permitted such as a visitor center, public market, conference facilities and retail establishments. Together, these uses should emphasize the civic importance of the area, draw people into the Ferry Building, and establish the area as a destination in its own right.

The Plan emphasizes the importance of ensuring that the Ferry Building and environs are physically and visually integrated with their spectacular City and Bay settings, thus re-establishing the area as a gateway to the City. This includes extending the PortWalk through the area to provide more convenient, direct and aesthetically pleasing public access connections to open space and the Bay.

17 Maximize efficient use of new and existing parking facilities in a manner that does not hamper maritime business operations.

18 Comply with all applicable environmental and water quality laws and regulations, and any related policies adopted by the Port Commission (and, in the Fisherman's Wharf area, reviewed by the Fisherman's Wharf Environmental Quality Advisory Committee) including storm water drainage policies for new construction and facility improvement projects.

## Open Spaces and Public Access

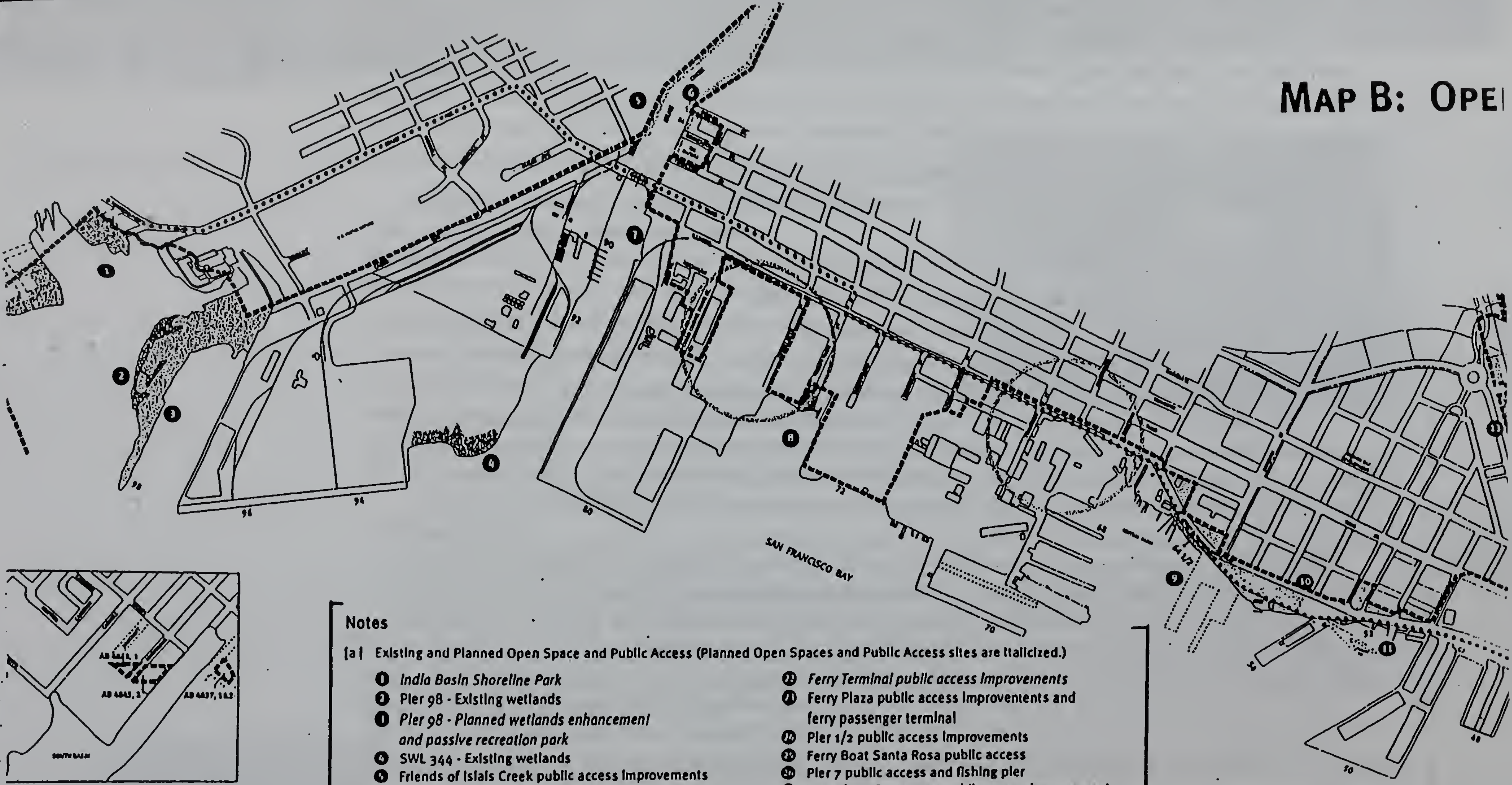
The Waterfront Land Use Plan identifies existing and new Open Spaces and Public Access sites generally on Map B and more specifically in the Acceptable Land Use Tables in Chapter 4. Open spaces and public access on Port property are permitted uses of public trust lands, and can be allowed under the San Francisco *General Plan* and Planning Code. Under the McAteer-Petris Act and BCDC Bay Plan policies, open space is a form of public access, which can be created on replacement fill or on minor amounts of new fill in BCDC's Bay jurisdiction.

Historically, there were relatively few open space and public access improvements on Port property because of the maritime and industrial uses that dominated the waterfront. However, changing land use patterns over the last 20 years have created opportunities to transform significant stretches of the Port waterfront to open spaces and public access.

The Pier 7 fishing and open space pier at the foot of Broadway is the most recent (completed in 1990), and perhaps most successful, open space amenity constructed at the Port. This elegant pier extends 900 feet into the Bay, offering stunning views of the City and the water. It has received a number of awards for design excellence and has already become a well-known waterfront landmark. South of the Ferry Building, the Embarcadero promenade extends along the water's edge from the Agriculture Building to Pier 22½ near the Bay Bridge, providing a popular lunch retreat for downtown workers. Other public access improvements at Pier 39 in Fisherman's Wharf provide views of the marina and playful sea lions, and extensive landscaped gardens to delight the many visitors attracted to the area. In addition, volunteer citizen efforts currently underway along Islais Creek have resulted in new landscaping and public access improvements that are compatible with ongoing maritime and industrial operations in the area.

Unfortunately, not all of the open spaces at the Port have been improved to their full potential, and many do not provide maximum public benefits. The Ferry Plaza on the bayside of the Ferry Building, and Warm Water Cove and Pier 98 in the southern waterfront, are examples of these underutilized resources. Other Port sites have been proposed or approved for major open spaces, but have not yet been developed. These include Rincon Point and South Beach Parks included in the *Rincon Point-South Beach Redevelopment Plan*, and other waterfront open spaces approved as part of the *Mission Bay Redevelopment Plans*.

# MAP B: OPE



cels shown above are located just north
Park. The Port also owns portions
planned streets that are not depicted.

Notes

[a] Existing and Planned Open Space and Public Access (Planned Open Spaces and Public Access sites are italicized.)

① *India Basin Shoreline Park*
② Pier 98 - Existing wetlands
③ *Pier 98 - Planned wetlands enhancement and passive recreation park*
④ SWL 344 - Existing wetlands
⑤ Friends of Islais Creek public access improvements
⑥ *Department of Public Works and Friends of Islais Creek public access improvements*
⑦ Department of Public Works public access improvements
⑧ Warm Water Cove Park and fishing pier
⑨ Agua Vista Park
⑩ *Mission Bay Open Space*
⑪ Pier 52 Boat Launch and Service Engineering public access improvements
⑫ *South China Basin Park*
⑬ Mission Creek Harbor Association public access improvements
⑭ *Pacific Bell Ballpark planned shoreline public access*
⑮ South Beach Park
⑯ South Beach Yacht Harbor public access improvements
⑰ Pier 38 public access improvements
(17a) *Brannan Street Wharf*
⑱ South Embarcadero Promenade
⑲ *Rincon Park*
⑳ Embarcadero Promenade between Pier 22 1/2 and The Agriculture Building

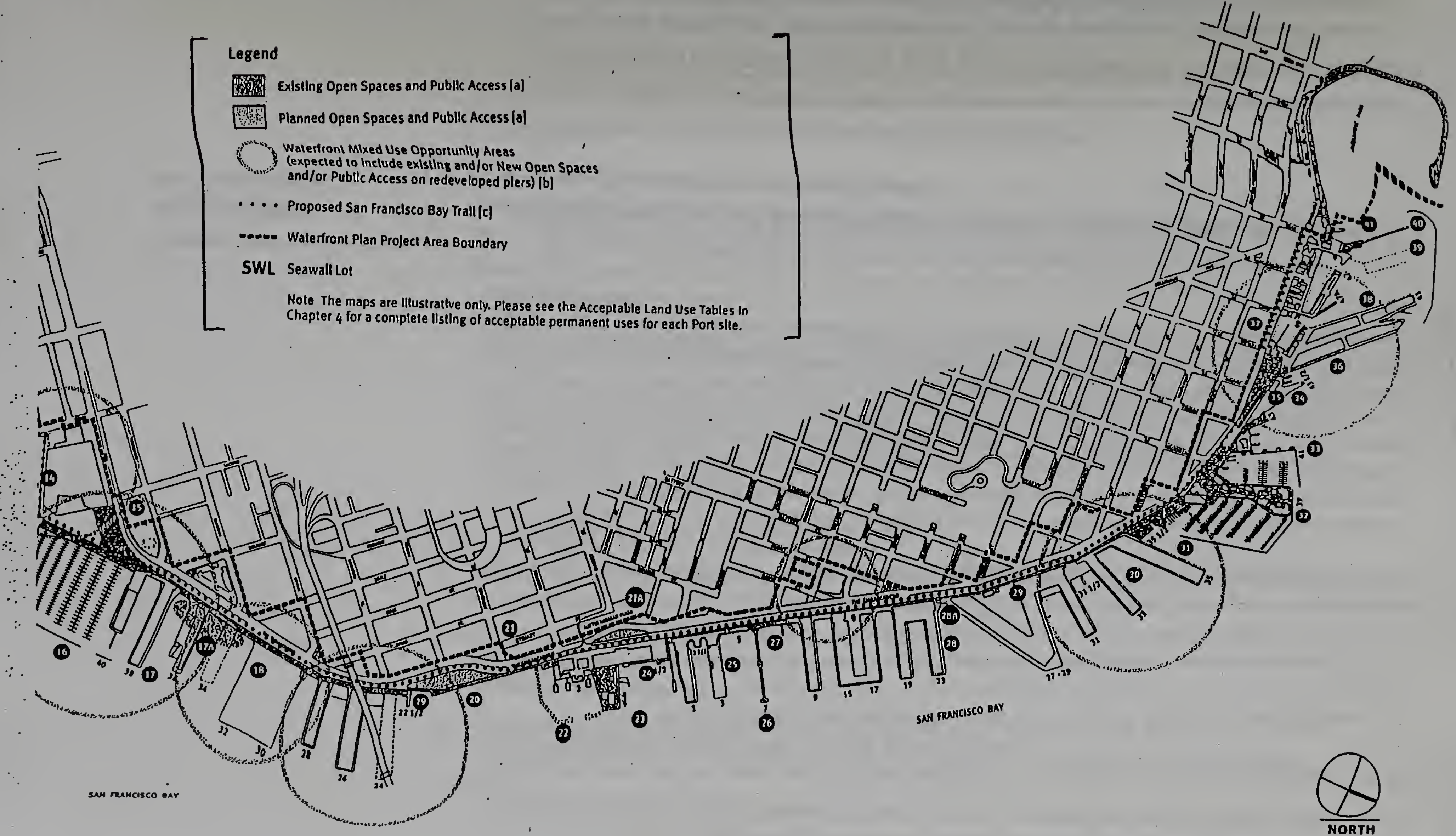
㉒ *Ferry Terminal public access improvements*
㉓ Ferry Plaza public access improvements and ferry passenger terminal
㉔ Pier 1/2 public access improvements
㉕ Ferry Boat Santa Rosa public access
㉖ Pier 7 public access and fishing pier
㉗ Waterfront Restaurant public access improvements
㉘ *Pier 23 public access improvements*
(28a) *Northeast Wharf (site to be identified in Pier 15-29 Special Study)*
㉙ North Embarcadero Promenade
㉚ Cruise terminal viewing deck at Pier 35
㉛ East Wharf Park
㉜ Pier 39 and Underwater World public access improvements
㉝ Pier 41 public access pier
㉞ Pier 43 and 43 1/2 public access areas
㉟ *Fisherman's Wharf Triangle Lot public access and open space improvements*
㊱ Pier 45 public access near historic submarine "Pampanito"
㊲ Inner Lagoon boardwalk
㊳ Pier 47A public access
㊴ *Hyde Street Harbor access*
㊵ Hyde Street Pier historic ships
㊶ South End Rowing Club public sun deck

Not shown: Proposed plaza in front of Ferry Building.

[b] In these areas a mix of uses is allowed, which include public access and open space. The combination and proportion of uses in these areas will vary as implementation of the Plan occurs. Refer to Map D and discussion of Waterfront Mixed Use Opportunity Areas in Chapter 4 for specific locations of mixed use areas and further discussion.

[c] The proposed Bay Trail route may be relocated to nearby streets if further studies reveal conflicts with Port operations.

# ACES AND PUBLIC ACCESS



**Legend**

- ▨ Existing Open Spaces and Public Access [a]
- ░ Planned Open Spaces and Public Access [a]
- ○ Waterfront Mixed Use Opportunity Areas (expected to include existing and/or New Open Spaces and/or Public Access on redeveloped piers) [b]
- • • • • Proposed San Francisco Bay Trail [c]
- ▬▬▬ Waterfront Plan Project Area Boundary
- **SWL** Seawall Lot

Note The maps are illustrative only. Please see the Acceptable Land Use Tables in Chapter 4 for a complete listing of acceptable permanent uses for each Port site.

SAN FRANCISCO BAY
SAN FRANCISCO BAY
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41

To address existing shortcomings, the Waterfront Design & Access Element includes special emphasis on public access and open spaces. Policies in the Element call for creation of an integrated system of public access and open spaces which includes a variety of open spaces, services and improvments to make them more attractive to the public (See Chapter 3 of the Design & Access Element).

When fully developed, the open spaces and public access areas shown on Map B, will provide substantial and varied opportunities for public enjoyment on a greater number of waterfront sites than identified in the City's *General Plan*. In addition, the landscaping and public access improvements under construction as part of the Waterfront Transportation Projects will establish continuity and a uniform design standard for other new waterfront open spaces and public access improvements. This integrated series of open spaces and public access areas will complement the San Francisco segments of the regional Bay Trail that, when completed, will extend around the perimeter of San Francisco Bay.

The main constraint to realizing this future is the lack of Port or City funds for these ambitious improvements. While the Waterfront Transportation Projects have been paid for primarily with federal and state transportation funds, many of the other open space improvements have yet to secure financing. The Port actively pursues state and federal grants to fund public access projects, such as the $500,000 grant it recently secured for public access improvements at Pier 47A in Fisherman's Wharf. The Port should make efforts to obtain City Recreation and Park Department funds for open space acquisition, renovation and maintenance improvements. However, it is anticipated that there will be fewer public funding programs available in the future. As a result, the Port will need to rely on new revenue-generating developments to help create and maintain open spaces and public access improvements.

## General Land Use Policies for Open Spaces and Public Access

The General Land Use Policies listed below apply to Existing and New Open Spaces and Public Access, as indicated. In addition, more detailed development standards are identified for specific sites in Chapter 4 and in the Waterfront Design and Access Element.

### General Policies for Existing and New Open Spaces and Public Access

1 Ensure a diversity of Open Spaces and Public Access, which may be achieved in different ways depending on location: places that provide access to the water; quiet, contemplative places for passive enjoyment; active places for civic gatherings and other urban events that draw large crowds; places for biking and foot race events; places that restore the environment and support wildlife habitats; places to learn about waterfront activities and the Bay environment; and places that appeal to children and seniors.

2 Provide public facilities (e.g. restrooms, public phones, drinking fountains, information kiosks) in Open Spaces and Public Access areas wherever desirable and feasible as indicated in the Waterfront Design & Access Element.

3 North of China Basin, route pedestrian paths and circulation in Open Spaces and Public Access areas to create a "PortWalk" that maximizes connections with the Bay, the pedestrian promenade along The Embarcadero, and the regional Bay Trail as indicated in the Waterfront Design & Access Element.

4 Provide public access around the perimeter of piers, wherever safe and feasible as indicated in the Waterfront Design & Access Element.

5 Continue to pursue government and private funding and other financing strategies to cover capital and maintenance costs and to improve the appearance of Existing and New Open Spaces and Public Access.

6 Comply with all applicable environmental and water quality laws and regulations, and any related policies adopted by the Port Commission ( and, in the Fisherman's Wharf area, reviewed by the Fisherman's Wharf Environmental Quality Advisory Committee) including storm water drainage policies for new construction and facility improvement projects.

**General Policies for New Open Spaces and Public Access**

7 Encourage and support volunteer citizen efforts to create public access improvements by assisting with grant and funding acquisition, and facilitating the permit review process.

8 Whenever possible, link the development of New Open Spaces and Public Access to the development of new commercial activities that would help activate the public areas as well as provide sources of development and maintenance financing.

9 Where space permits, allow accessory commercial activities (e.g. food and beverage stands or carts, bike or skate rentals) to provide services to open space visitors as indicated in the Waterfront Design & Access Element.

10 Protect open spaces from shadow and wind impacts from adjacent development, according to applicable law.

## Residential Uses

Existing residential development on Port property currently is located on Seawall Lots 331, 332 and 333 in the South Beach area, all of which have been developed with below-market rate housing (Delancey Street and Steamboat Point Apartments). Prior to approval and construction of housing on those sites, the Port, State Lands Commission and the Legislature adopted special findings determining that those seawall lots were surplus to the needs of the public trust before those units were built, because residential use is not consistent with the public trust. Under limited conditions, New Residential Uses may be developed on most seawall lots in Waterfront Mixed Use Opportunity Areas north of China Basin shown on Map C and on other sites as indicated in the Acceptable Land Use Tables in Chapter 4. As discussed in the introduction to this Chapter, pursuant to the public trust doctrine, any sites developed with housing must be declared surplus to the needs of the trust. Such a declaration may be appropriate for these lots because the land involved is separated from the water, constitutes a small portion of the land in the public trust, and could be more useful to the overall development of the waterfront as housing than if retained for a strictly trust use.

Residential use adjacent to mixed-use developments on piers would increase the security of public access areas along the waterfront by introducing day and nighttime activities. Successfully designed and developed, Residential Uses on Port property will play a key role in reuniting the City with its waterfront. Adjacent to the Port, there are several established and new residential neighborhoods mixed with commercial businesses, particularly in the northeast waterfront and South Beach areas. Additional residential development on Port seawall lots could complement these emerging inland neighborhoods.

### General Land Use Policies for New Residential Uses

The General Land Use Policies listed below apply to New Residential Uses. In addition, more detailed development standards are identified for specific sites in Chapter 4.

1 Permit New Residential Uses on seawall lot sites specified in Chapter 4 if those sites are not required to support maritime activities on adjacent piers.

2 Permit accessory commercial uses within residential developments, particularly on the ground floor, to provide activities and interest for pedestrians, as well as goods and services for residents.

3 Permit social and common areas which could be available for community meetings to serve on-site or nearby residents.

4 Ensure that new residential development meets the requirements of the Waterfront Design & Access Element and the following design objectives:

a. For projects that fro[illegible] The Embarcadero, include landscaping or other design amenities [illegible] both protect the privacy of the residents and enhance the public access improvements constructed as part of the Waterfront Transportation Projects, thereby creating a transition between the City and waterfront activities.

b. Avoid massive buildings and protect visual access to the waterfront by incorporating terraced or other building designs where appropriate.

5 Comply with applicable City policy regarding provision of affordable housing for New Residential Uses.

6 Coordinate with the State Lands Commission to lift the Public Trust on any seawall lots proposed for New Residential Uses which yield fair market return and generate surplus revenue to fund public trust-related Port activities, consistent with provisions of the *Burton Act*.

## Commercial Uses

Commercial Uses consist of the uses listed below, which have been designated as land use options on one or more of the Waterfront Mixed Use Opportunity Areas or Existing (Long-term) Residential or Commercial Use Areas shown generally on Map C and, more specifically, on sites indicated in the Acceptable Land Use Tables in Chapter 4. Commercial Uses are divided into two groups which are described below: those permitted on piers and those permitted on seawall lots. (Further descriptions are provided in Appendix C, Glossary of Terms.)

Non-maritime commercial uses will be carefully considered to ensure that the use is permissible under State law (i.e. the Burton Act and BCDC policies and regulations). For example, before the Port would grant a long-term lease for a commercial use on a pier, it would determine whether the use promoted the public trust by attracting people to use and enjoy the Bay or was an incidental part of an overall program of harbor development. If the proposed use was to be located within BCDC's Bay jurisdiction, the use would also have to be water-oriented or located within an historic structure listed on the National Register of Historic Places, in addition to meeting other criteria. Commercial uses on seawall lots would be outside of BCDC's jurisdiction; some seawall lots may also be free of trust restrictions or available for longer term leases than pier sites. These commercial uses also can be allowed under the San Francisco *General Plan* and Planning Code as permitted or conditional uses, depending on the zoning district in which they are located.

### Commercial Uses on Piers

- Artist/Designers Studios and Galleries - Includes craft studios and galleries
- Assembly and Entertainment - Includes conference facilities, theaters (cinemas and live performances), night clubs and nighttime entertainment venues, amusement parks, exhibition halls, public markets, children's entertainment
- Recreational Enterprise - Includes facilities offering recreational and athletic fitness services
- Museums
- Parking (accessory to acceptable uses only)
- Retail - Includes retail goods and services, eating and drinking establishments, and public markets
- Visitor Services
- Warehousing/Storage (excludes mini-storage on piers or within 100 feet of the shoreline)
- Wholesale Trade/Promotion Center - Includes wholesale trade promotion for a type of product, for example, California products (e.g. gourmet foods, wine, seafood, or other agricultural products), with related exhibit and conference facilities and import/export services.
- General Office (in buildings that are listed in the National Register of Historic Places, and bulkhead and connector buildings)

### Commercial Uses on Seawall Lots

- Commercial Uses on Piers, as described above
- Hotel
- General Office (Pursuant to the *Burton Act*, seawall lots developed with General Offices must be declared surplus to maritime needs.)
- Parking (general parking facilities and parking accessory to acceptable uses)
- Warehousing/Storage (including mini-storage warehouses on seawall lots

There has been very little new commercial development on Port property within the last 20 years. Many of the existing commercial uses in the northern waterfront were developed before 1980 as single-use establishments, including Alioto's, The Franciscan and other seafood restaurants, the Blue Shield office building in Fisherman's Wharf, and the Francisco Bay Office Park in the northeast waterfront.

One exception is Pier 39, the visitor-oriented retail and entertainment complex in Fisherman's Wharf, which was built in 1978 as a mixed-use maritime complex. Although some critics consider the development too tourist-oriented, and not properly oriented towards the water, Pier 39 nevertheless successfully integrates marina and excursion boat activities and public access features which have greatly improved the appearance of the area.

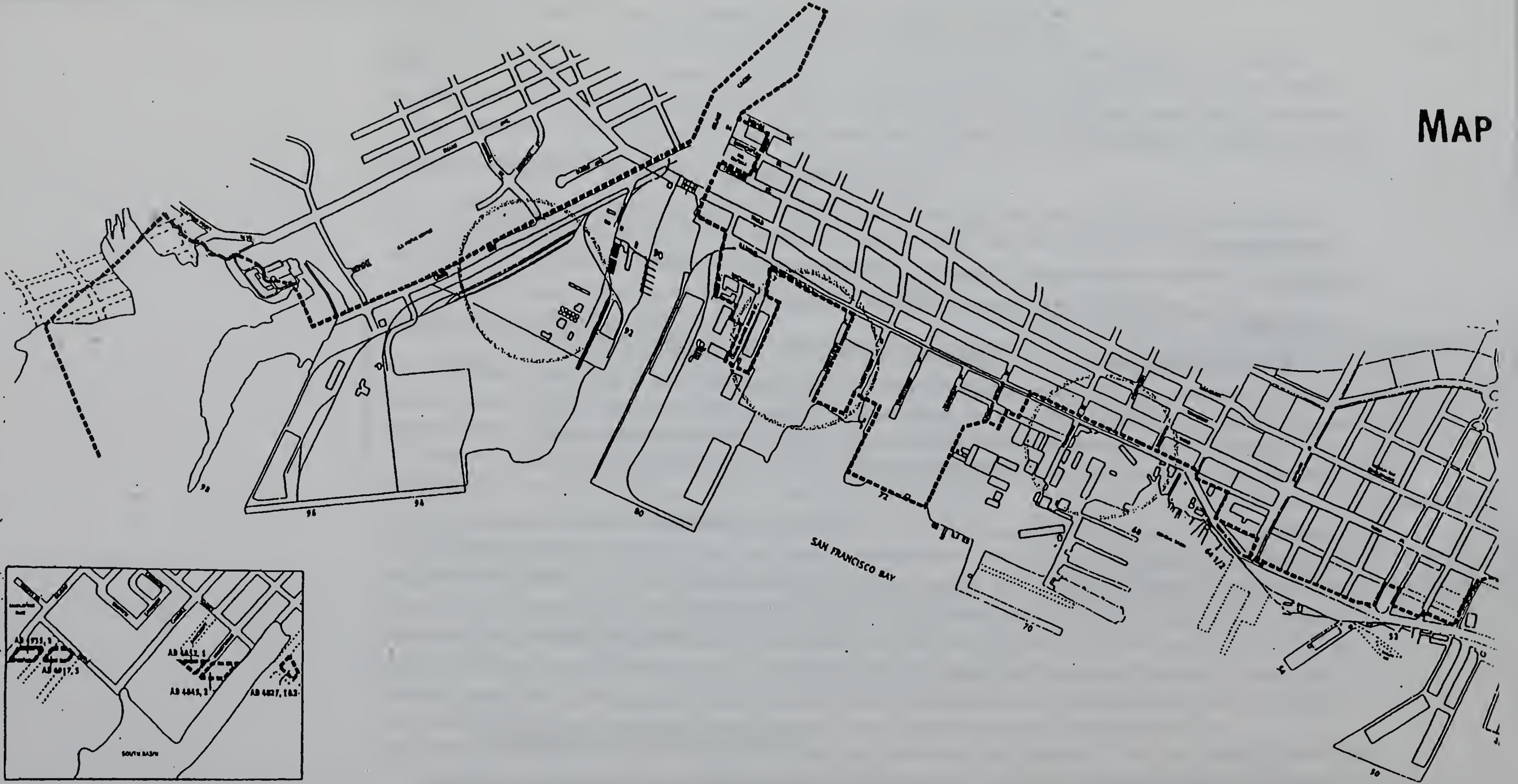
The Waterfront Land Use Plan promotes a variety of commercial activities, including both revenue-generating and non-profit uses. As discussed more fully in the Introduction to Chapter 4, the Plan strongly encourages that, where feasible, new commercial development on piers be a part of mixed-use developments (in new "Waterfront Mixed Use Opportunity Areas") which include maritime uses and open space and public access to bring day and nighttime activity to the waterfront and foster long term public-oriented activities on Port property. If planned and executed in a coordinated fashion, this flexible, mixed-use development approach offers excellent opportunities to reunite the City with waterside attractions and amenities. To achieve this goal, the Waterfront Design & Access Element provides additional policies for the design of new development, including policies on public access, views and historic preservation. In addition to the existing Port properties discussed in this Plan, any new properties that the Port may acquire or control may be considered for mixed-use development.

New public transit service planned as part of the Waterfront Transportation Projects will greatly improve access to new developments on Port property, and should be promoted as a primary mode of transportation. However, new assembly, entertainment and other public-oriented uses along the waterfront, particularly those attracting people during the evenings and weekends, will require additional parking. Wherever parking is provided, appropriate efforts should be made to maximize the efficient use of new and existing parking.

The development of major new commercial uses, particularly in mixed-use developments on piers and waterside sites, will also provide opportunities to establish a "PortWalk", a new way to experience the sights and sounds of waterfront activities, by extending public access onto piers and connecting it to pedestrian improvements along The Embarcadero. The Waterfront Design & Access Element includes further discussion and description of qualitative standards for PortWalk improvements.

The Waterfront Plan also promotes low-scale development along most of the waterfront, consistent with the existing 40 foot height limits which apply to all piers, except in the Ferry Building area where there is an 84 foot height limit. Most of the Port's seawall lots also have a 40 foot height limit, with 84 foot and 105 foot height limits for a few parcels, and the planned ballpark site on Pier 46B which has a limit of 150 feet. All of the permitted commercial uses can be developed within these existing height limits.

# MAP



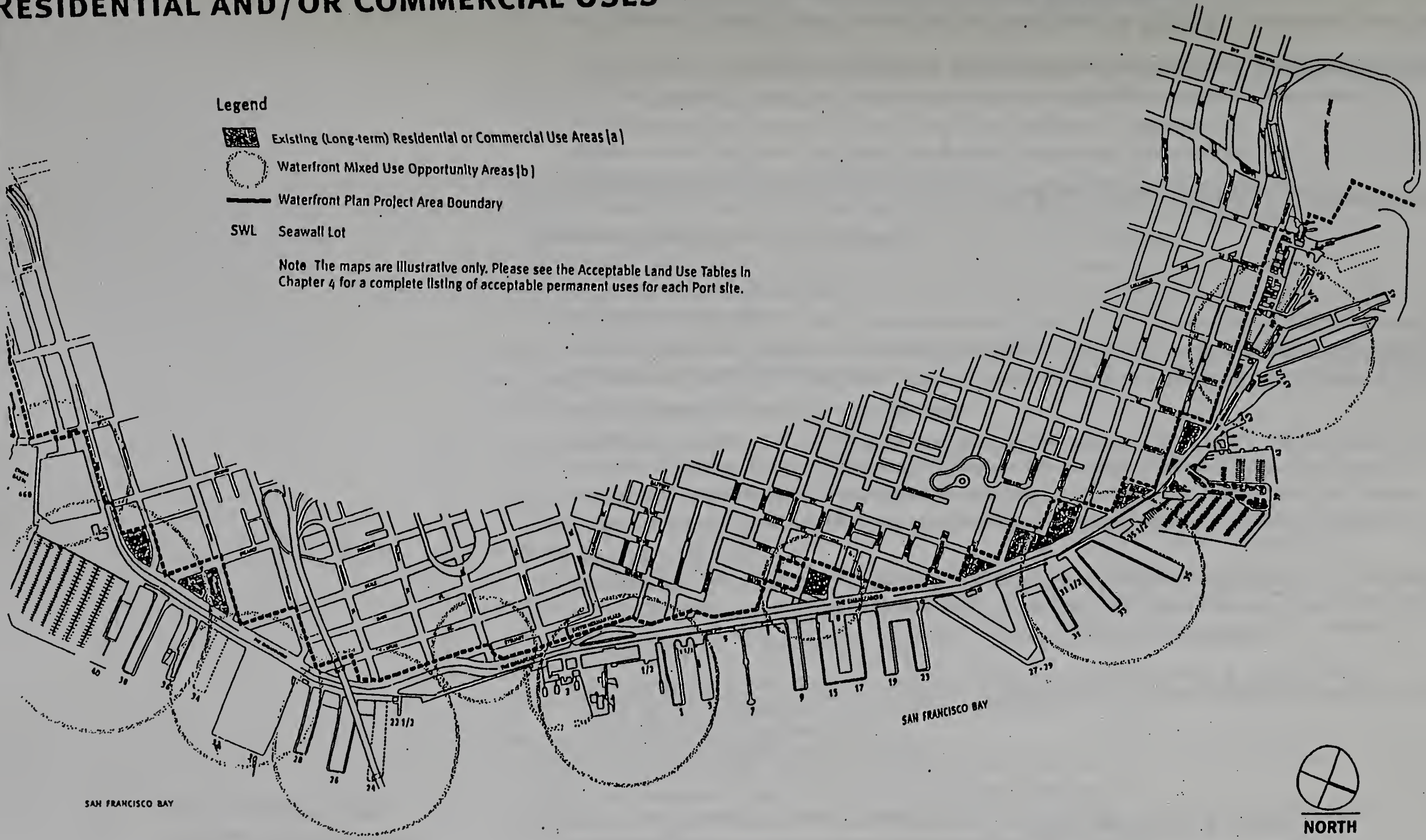
Note The parcels shown above are located just north of Candlestick Park. The Port also owns portions of existing or planned streets that are not depicted.

**Notes**

(a) The identified residential or commercial use areas are developed and expected to continue exclusively as residential or commercial use properties in the long-term. This designation does not include areas that may be leased for commercial use on an interim basis.

(b) In these areas a mix of uses is allowed, which includes New Residential and/or Commercial Uses as well as Maritime and Open Space (however, Residential Use is prohibited on piers). The combination and proportion of uses in these areas will vary as implementation of the Plan occurs. Refer to Map D and discussion of Waterfront Mixed Use Opportunity Areas in Chapter 4 for specific locations of mixed use areas and further discussion.

# RESIDENTIAL AND/OR COMMERCIAL USES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22 1/2
1/2
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27-29
31
31 1/2
33
35
SAN FRANCISCO BAY
SAN FRANCISCO BAY
NORTH

Legend

▨ Existing (Long-term) Residential or Commercial Use Areas [a]

○ Waterfront Mixed Use Opportunity Areas [b]

— Waterfront Plan Project Area Boundary

SWL Seawall Lot

Note The maps are illustrative only. Please see the Acceptable Land Use Tables in Chapter 4 for a complete listing of acceptable permanent uses for each Port site.

## General Land Use Policies for Commercial Uses

The following General Land Use Policies apply to Existing and New Commercial Uses, as indicated. In addition, more detailed development standards are identified for specific sites in Chapter 4.

### General Policies for Existing Commercial Uses

1 Seek to improve public access and make the shoreline more attractive when renegotiating leases or issuing permits for Existing Commercial Uses, consistent with the Waterfront Design & Access Element.

2 Ensure that the Port is receiving fair market rents for its facilities wherever possible.

3 Seek new commercial tenants who will generate sufficient revenue to finance maritime, open space and public access improvements included in the projects, and yield ground lease payments to the Port to meet other capital and operational costs.

4 For Port seawall lots located along The Embarcadero between Powell and Vallejo Streets which are developed with Existing Commercial Uses, provide opportunities for conversion to other uses, when desirable to increase the revenue-generating potential and/or complement uses developed on adjacent Port sites. As indicated in the Waterfront Design & Access Element, any new uses should be sensitive to the character and scale of development in adjacent non-Port areas.

5 Comply with all applicable environmental and water quality laws and regulations, and any related policies adopted by the Port Commission ( and, in the Fisherman's Wharf area, reviewed by the Fisherman's Wharf Environmental Quality Advisory Committee) including storm water drainage policies for new construction and facility improvement projects.

### General Policies for New Commercial Uses

6 Wherever possible, seek New Commercial Uses on seawall lots, piers, or waterside properties which generate sufficient revenue to finance maritime, open space and public access improvements included in the projects, and yield fair market return to the Port to meet other capital and operational costs.

[7 Consistent with the Public Trust, encourage New Commercial Uses on piers or waterside properties, preferably as part of mixed-use developments, which include maritime activities and public access or open space amenities, primarily located in areas north of China Basin. In BCDC Bay jurisdiction, ensure that New Commercial Uses are water-oriented and meet other BCDC policies.]

8 Permit the mix of uses to be distributed among adjacent piers and seawall lots which together would complement neighboring developments and thus unite the waterfront with the rest of the City.

9 Respond to the needs and interests of the widest feasible range of user groups in new mixed-use developments (including seniors, children, San Francisco's diverse cultural community, disabled persons and other groups with special needs).

10 Major developments on waterside properties should highlight maritime features and incorporate public access improvements which maximize visual connections (and physical contact, to the extent possible) with the water, as further described in the Waterfront Design and Access Element.

11 Provide affirmative action to maximize opportunities for minority and women- owned businesses and small businesses to participate in waterfront business enterprises. Extend waterfront business opportunities to non-profit operations whenever possible.

12 Prohibit new private clubs with exclusive memberships (i.e. members must be voted in). Allow other clubs that may charge membership fees ( e.g. YMCA), but encourage pay-as-you go use of facilities or other measures to allow occasional club use, to the maximum feasible extent.

13 As further described in the Waterfront Design & Access Element, create a PortWalk made up of integrated public access walkways and plazas which connect major new developments on piers with public sidewalks and rights-of-way along The Embarcadero. The PortWalk should:

- a. Guide pedestrian circulation in and among activities on piers and along pier perimeters wherever possible;
- b. Maximize views of the water;
- c. Include signage describing maritime activities and historical points of interest along the way;
- d. Provide adequate lighting and security to promote public use during the day and night.
- e. Provide a continuous waterside pedestrian walk from Fisherman's Wharf to China Basin and in waterfront areas south of China Basin wherever possible.

14 Develop projects which are consistent with the Waterfront Design & Access Element and which meet the following objectives for mixed use developments:

- a. Coordinated building designs, particularly for projects that include more than one site, to achieve a cohesive, complementary blend of architectural styles among adjacent sites.
- b. Coordinated landscaping and public access improvements to complement and enhance the Waterfront *Transportation Project improvements along* The Embarcadero (where applicable).
- c. Terraced building designs or other design treatments which protect views of the Bay and avoid massive buildings.
- d. Locations from which to view the City from the water.

# 4

# Subarea Plans

Chapter 4 provides area objectives and development standards for specific Port sites in each of 5 subareas of the Port: The Fisherman's Wharf Waterfront, The Northeast Waterfront, The Ferry Building Waterfront, The South Beach/China Basin Waterfront and The Southern Waterfront. The discussion for each area includes background information which supports each subarea objective. The objectives are followed by development standards which provide guidance on appropriate maritime, open space, public access, residential, commercial and other development in the subarea. The discussion also includes an Acceptable Land Uses Table for Port properties located in the subarea.

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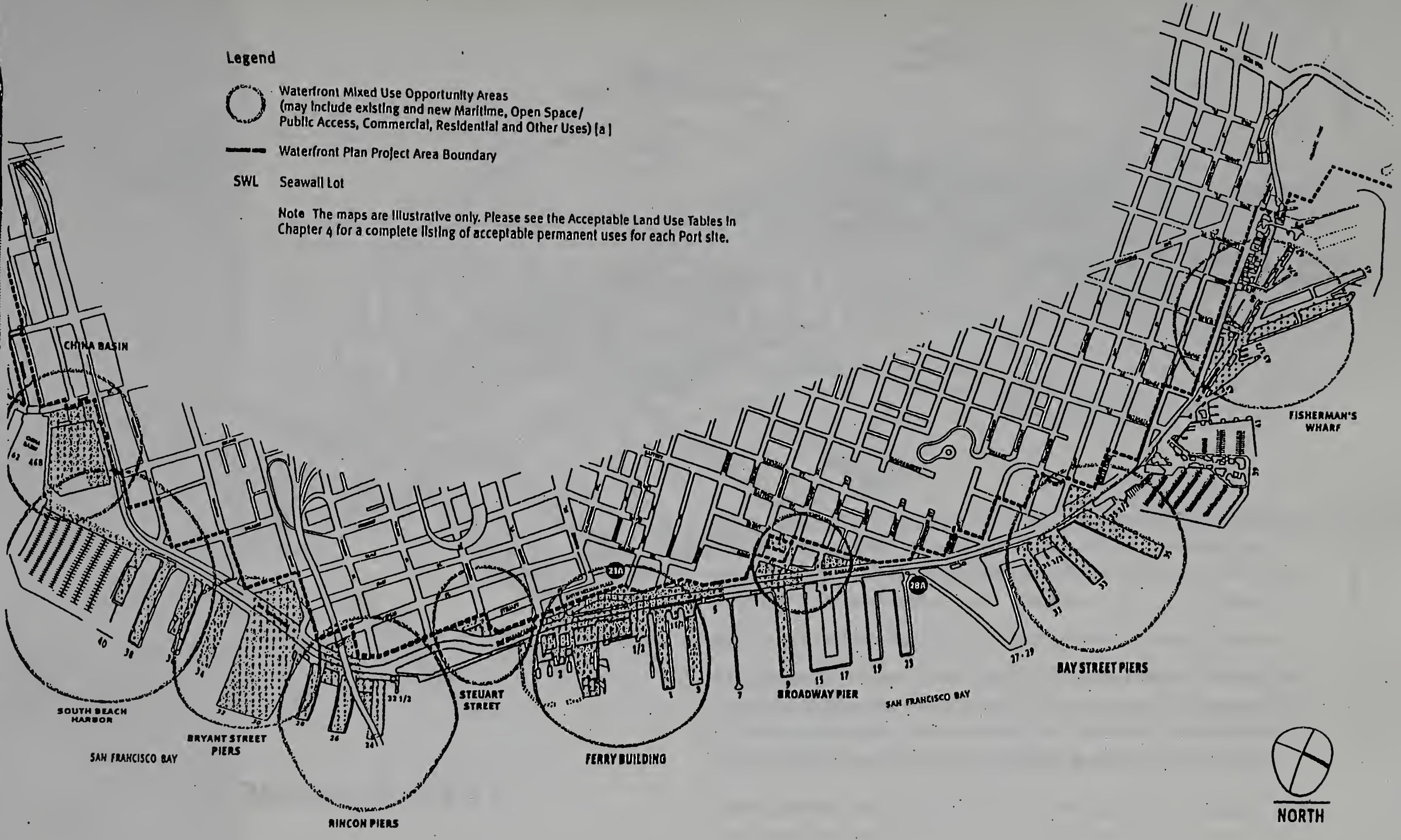
# Waterfront Mixed Use Opportunity Areas



Legend

◌ Waterfront Mixed Use Opportunity Areas (may include existing and new Maritime, Open Space/ Public Access, Commercial, Residential and Other Uses) [a]

▬ ▬ Waterfront Plan Project Area Boundary

SWL Seawall Lot

Note The maps are illustrative only. Please see the Acceptable Land Use Tables in Chapter 4 for a complete listing of acceptable permanent uses for each Port site.

CHINA BASIN
SOUTH BEACH HARBOR
SAN FRANCISCO BAY
BRYANT STREET PIERS
RINCON PIERS
STEUART STREET
FERRY BUILDING
BROADWAY PIER
SAN FRANCISCO BAY
BAY STREET PIERS
FISHERMAN'S WHARF
NORTH
40
38
36
34
32
30
28
26
24
22 1/2
1/2
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19
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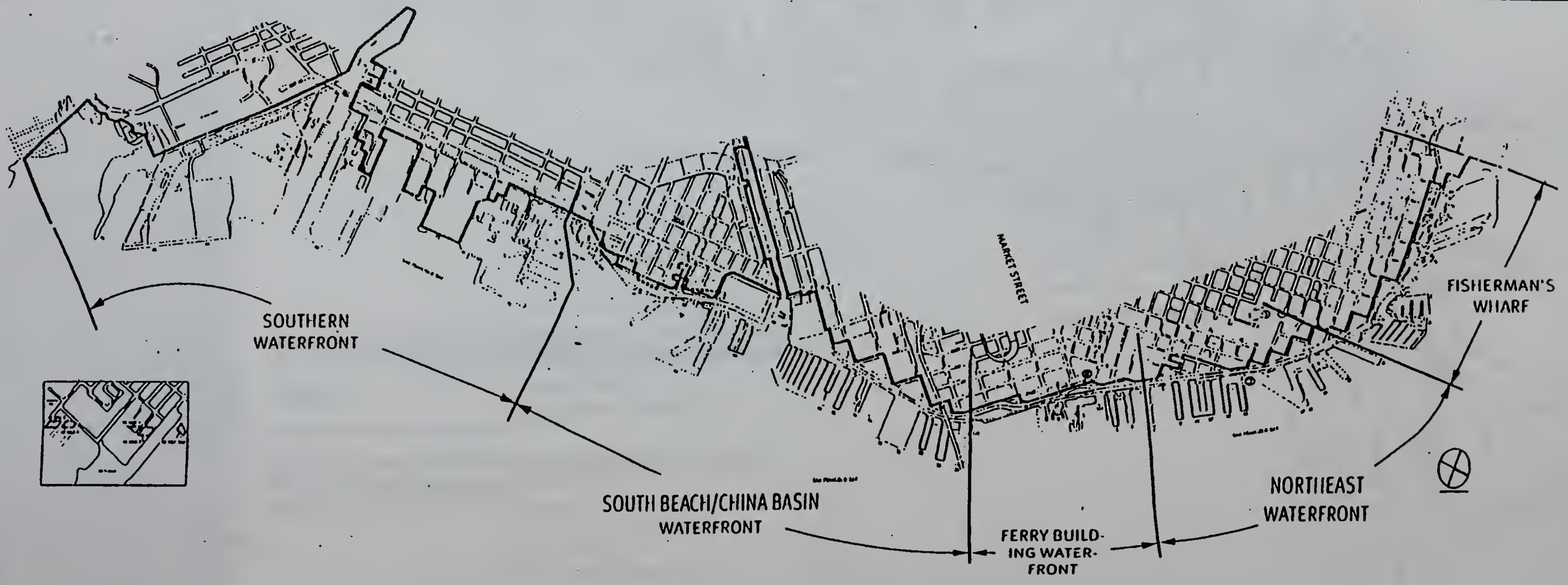
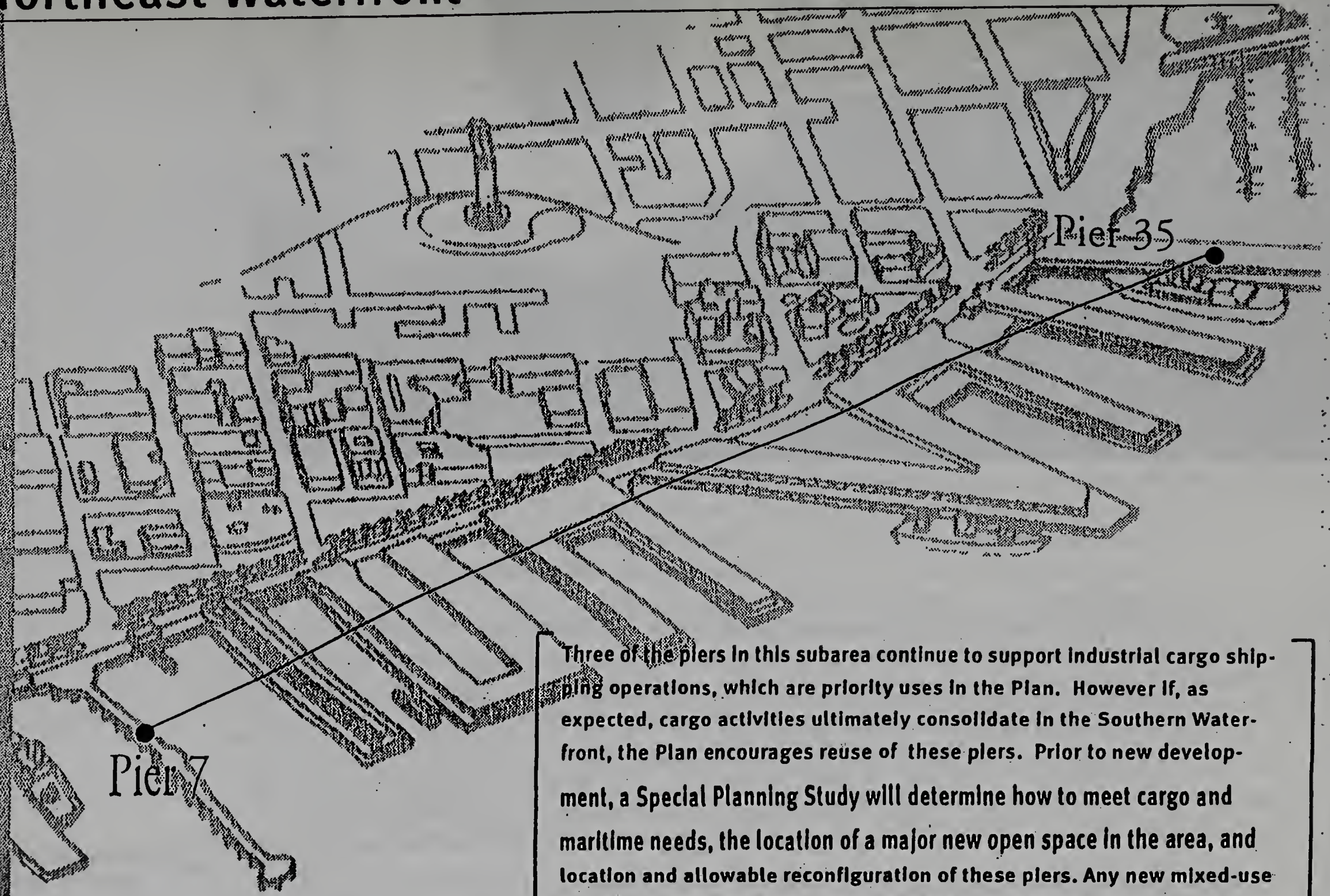
27-29
31
35
21A
28A

# Subarea Boundary Map


MARKET STREET
FISHERMAN'S WHARF
NORTHEAST WATERFRONT
FERRY BUILDING WATERFRONT
SOUTH BEACH/CHINA BASIN WATERFRONT
SOUTHERN WATERFRONT

*and industrial district which is successfully evolving into a vibrant urban neighborhood.*

# The Northeast Waterfront



Three of the piers in this subarea continue to support industrial cargo shipping operations, which are priority uses in the Plan. However if, as expected, cargo activities ultimately consolidate in the Southern Waterfront, the Plan encourages reuse of these piers. Prior to new development, a Special Planning Study will determine how to meet cargo and maritime needs, the location of a major new open space in the area, and location and allowable reconfiguration of these piers. Any new mixed-use pier developments will include commercial recreation activities along with excursion boats, cruise ships, or other maritime uses and public access activities which appeal to the local and regional population. New development on adjacent inland sites will complement the area's evolving mixed-use residential and commercial neighborhood.

## Objectives for the Northeast Waterfront

**Maximize opportunities for the retention of maritime operations.**

The Northeast Waterfront has undergone great change in the last 25 years, like much of the formerly industrial waterfront north of China Basin. While several of the finger piers still support maritime functions, only three piers continue to function exclusively as cargo-shipping related facilities: Piers 27-29 are operated as a newsprint shipping terminal and Piers 15-17 and 19-23 are used for cargo warehousing and transhipment, and the Port's Foreign Trade Zone. The Port's passenger cruise terminal is located at Pier 35, and Pier 31½ is the site of an excursion boat operation. The Northeast Waterfront includes sites for a number of other maritime support activities, such as tug and tow boat berthing at Pier 15 and the headquarters of the San Francisco Bar Pilots Association at Pier 9. The striking series of pierhead and bulkhead buildings on Piers 9, 15, 19, 23, 29, 31, 33 and 35 provide this area with a unique architectural, historic and maritime character.

*Pier 33 & 35 bulkhead & connector buildings near the foot of Bay Stre*

In spite of the maritime activities still present in the Northeast Waterfront, the transformation of lands adjacent to the Port to mixed commercial and residential uses has introduced conditions which, over time, have reduced the viability of the area for cargo shipping and its related support operations. The evolution of the larger area has changed the function of The Embarcadero from an industrial service road accessing the piers, to a beautified urban boulevard with enhanced public transit, further impeding freight access to the piers.

It is likely that the remaining cargo activities in the Northeast Waterfront will eventually follow the path of the vast majority of the Port's cargo-related operations by relocating to the southern waterfront. However, other non-cargo maritime activities should thrive in the heavily traveled Northeast Waterfront, through the expansion and improvement of excursion boats, water taxi operations, recreational boating, berthing of pilot boats, tugboats and historic ships, and passenger cruises. Unlike cargo operations, these commercial- and recreation-oriented maritime activities are compatible with waterside public access improvements, and would therefore be enjoyed by all people of the City and State.

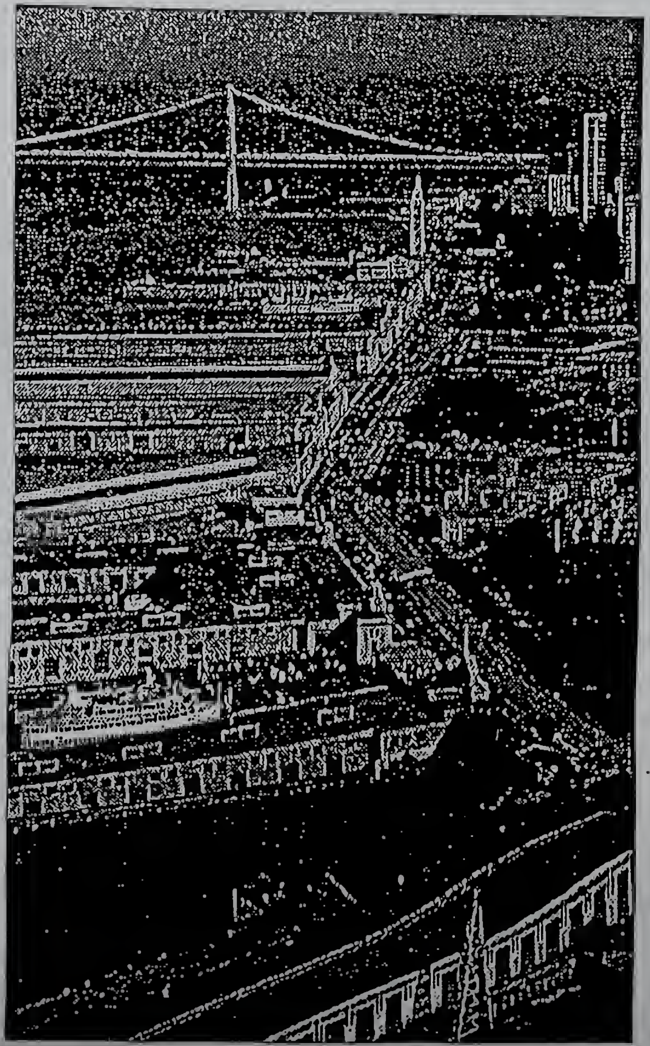
**Activate this area with an array of uses which establish a daytime and nighttime presence, but are not primarily tourist-oriented.**

New activities in the Northeast Waterfront should build upon the varied land use pattern in the surrounding area, extending the urban edge of the City to the waterfront. The mix of activities should reflect the City's cultural diversity, and appeal to the local and regional population, thereby providing entertainment and commercial recreation venues distinctly different from the more tourist-oriented activities in Fisherman's Wharf.

Existing land uses on Port property and property adjacent to the Port provide a rich context to support new activities along the waterfront. Along The Embarcadero, existing developments on Port seawall lots include the Francisco Bay Office Park between Sansome and Bay Streets (SWLs 315, 316, 317), Fog City Diner at Battery Street (SWL 319), and the landmark Belt Railway Roundhouse office building at Lombard Street (SWL 318). Developments outside of Port jurisdiction include the Levi Plaza office and retail complex, and many office and design-related businesses in restored historic buildings along Battery and Sansome Streets. In addition, the inland area includes established residential enclaves at the foot of Telegraph Hill and in the Golden Gateway mixed-use complex. This area, transformed from its industrial beginnings, is now regarded as a stable and desirable urban location.

The mix of uses found in inland locations highlights the need for people-oriented activities on surplus piers. Because of the formerly industrial focus of the area, most of the piers have not been designed with amenities or features that serve the general public. Currently, the one major public amenity in the area is Pier 7, an award-winning public access and fishing pier that extends 900 feet into the Bay. Further north, a few restaurants and bars such as the Pier 23 Cafe provide limited commercial services to passersby. These commercial activities, which have co-existed with neighboring maritime operations, should be expanded wherever possible.

Many of the piers not in exclusive cargo-related use should accommodate activities which integrate new public access with existing and expanded maritime operations. Similarly, the five underutilized seawall lots (SWLs 314, 321, 322-I, 323, 324) which are currently used for surface parking and a gas station should be developed with uses which activate the waterfront and are integrated with adjacent uses. If developed in conjunction with the piers, these seawall lots could provide support space and ancillary parking for pier activities, as well as sites for mixed-use hotel, office or residential developments with ground floor retail uses. In addition, the seawall lots should provide a smooth transition from inland neighborhood uses to shoreline improvements, making the area inviting to local residents.



*The Northeast Waterfront*

**Protect and enhance the historic maritime character of the area.**

New development in the Northeast Waterfront should be sensitive to the rich maritime history that is preserved in the Northeast Waterfront Historic District, the ribbon of bulkhead and connector buildings along The Embarcadero, and the remaining maritime activities on many of the piers. This should be accomplished by integrating maritime activities with commercial recreation activities on surplus piers, and requiring building and site designs which balance the need for new activities with the area's historic maritime character. Fortunately, many of the architecturally rich brick and concrete structures originally built for maritime and industrial operations have been renovated for modern office and retail uses, thereby preserving the character of the Historic District while establishing a strong economic base. Five Port seawall lots are included in the Historic District, four of which are undeveloped. Development of any one of these parcels must therefore include a design which reinforces and enhances the unique character and history embodied in the Historic District.

**New development should highlight the location of the area as a gateway to the North Beach and Chinatown neighborhoods to the west, and Fisherman's Wharf to the north.**

The Northeast Waterfront is located at the crossroads between the City's downtown district, North Beach and Chinatown neighborhoods, and Fisherman's Wharf. These areas rely heavily on The Embarcadero as a main point of access by visitors and residents alike, particularly since the demolition of the Embarcadero Freeway. New development along The Embarcadero, particularly near Broadway and Bay Streets, should be designed to provide an orientation point for entrance into these nearby districts.

**Provide new public access amenities which highlight newly created points of interest.**

In spite of a shortage of waterside public amenities in the area, The Embarcadero is a magnet for bicyclists, skaters, walkers and joggers. While the Waterfront Transportation Projects will provide major aesthetic, transit and pedestrian improvements along The Embarcadero, there is a need to expand public access onto the piers themselves, including places for people to relax and enjoy the views, and experience the water's edge.

Where feasible, the PortWalk should link the pier perimeters, offering pedestrians the pleasure of strolling leisurely from one activity to another, and connecting with the Waterfront Transportation Projects pedestrian improvements and the Pier 7 public access pier. The PortWalk would provide a new way for the public to enjoy the sights and sounds of the waterfront while allowing, but not requiring, interaction with the various entertainment and other activities which would be offered along the way. In addition, if piers are no longer needed for cargo use between Piers 15 and 29, then a site should be planned for a major new public open space that would be developed in conjunction with new mixed use development.

*Pier 7 public access pier*

# THE NORTHEAST WATERFRONT ACCEPTABLE LAND USE TABLE (1, 2, [illegible] 4)

Key

A = Acceptable Use
E/I = Existing Use/May Continue As Interim Use
X = Accessory Use

| | Maritime Uses (5) | | | | | | | | | | | Open Spaces/Public Access | | Residential Uses | Commercial Uses | | | | | | | | | | | Other Uses | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Cargo Shipping | Fishing Industry | Ferry and Excursion Boats | Historic Ships | Maritime Office | Maritime Support Services | Passenger Cruise Ships | Recreational Boating and Water Use | Ship Repair | Temporary and Ceremonial Berthing | Water Taxis | Open Space | Public Access | Residential | Artists/Designers | Assembly and Entertainment | General Office (6) | Hotels | Museums | Parking | Retail (includes restaurants) | Recreational Enterprises | Visitor Services | Warehousing/Storage | Wholesale Trade/Promotion Center | Academic Institutions | Community Facilities | General Industry | Power Plant | Sports Facilities | Transportation Services |
| Pier 35 | | | A | A | A | A | A | | | A | A | | A | | | A | A | | A | X | A | | A | E/I | A | | | | | | |
| Pier 33, 33½, 31½ | | A | A | A | A | A | A | | | | A | A | A | | | A | A | | A | X | A | | A | E/I | A | | | E/I | | | |
| Seawall Lot 314 | | | | | | | | | | | | | | A | | | A | A | | A | A | | | | | | | | | | |
| Pier 31 | | | | | A | A | | | | | | | A | | | | | | | X | | | | X | | | | | | | |
| Seawall Lots 315, 316, 317, 318, 319, 322 | | | | | | | | | | | | A | A | A | | | A | A | | A | A | | | | | | X | | | | |
| Pier 27-29, 29½ | A | | A | A | A | A | A | | | A | A | A | A | | | A | A | | A | X | A | A | | | A | | A | | | | |
| Pier 19-23, 23½ | A | | A | | A | A | | | | A | A | A | A | | | A | | | A | X | A | A | | X | | | A | | | | |
| Seawall Lot 320 | | | | | | | | | | | | A | | | | | | | | | | | | | | | | | | | |
| Pier 15-17 | A | | A | A | A | A | | | | A | A | A | A | | | A | A | | A | X | A | A | | E/I | A | | A | | | | |
| Seawall Lots 321, 323, 324, 322-1 | | | | | | | | | | | | A | | A | A | A | A | A | A | A | A | A | | | | | X | | | | |
| Pier 9, 9½ | | | A | | A | A | | A | | A | A | | A | | | A | E/I | | | X | A | | | | | | | | | | |
| Pier 7½ | | | | | | | | | | | | | A | | | | | | A | X | A | | A | | | | | | | | |
| Pier 7 | | | | | | | | | | | | A | A | | | | | | | | | | | | | | | | | | |

* General Office is an acceptable use in both the historic and non-historic buildings on the bulkhead sites of the piers.

**Table Notes**

1 This table focuses primarily on acceptable long-term uses for the sites described. The Plan also allows other interim uses on Port property, which uses are not identified in this table. See Chapter 3 for a description of interim use policies.

2 Refer to Chapter 3 and Chapter 4 for General Land Use Policies and specific Development Standards which apply to the acceptable uses and sites identified in this table.

3 Definitions of land uses are included in Appendix C, Glossary of Terms.

4 Uses are subject to further review for compliance with the Public Trust, BCDC and Planning Commission policies, which will vary depending on factors specific to the use proposal such as pier condition, extent of proposed repairs, and/or whether the use is proposed within a National Register historic resource. (See Chapter 3 and 5 for further discussion of waterfront regulations).

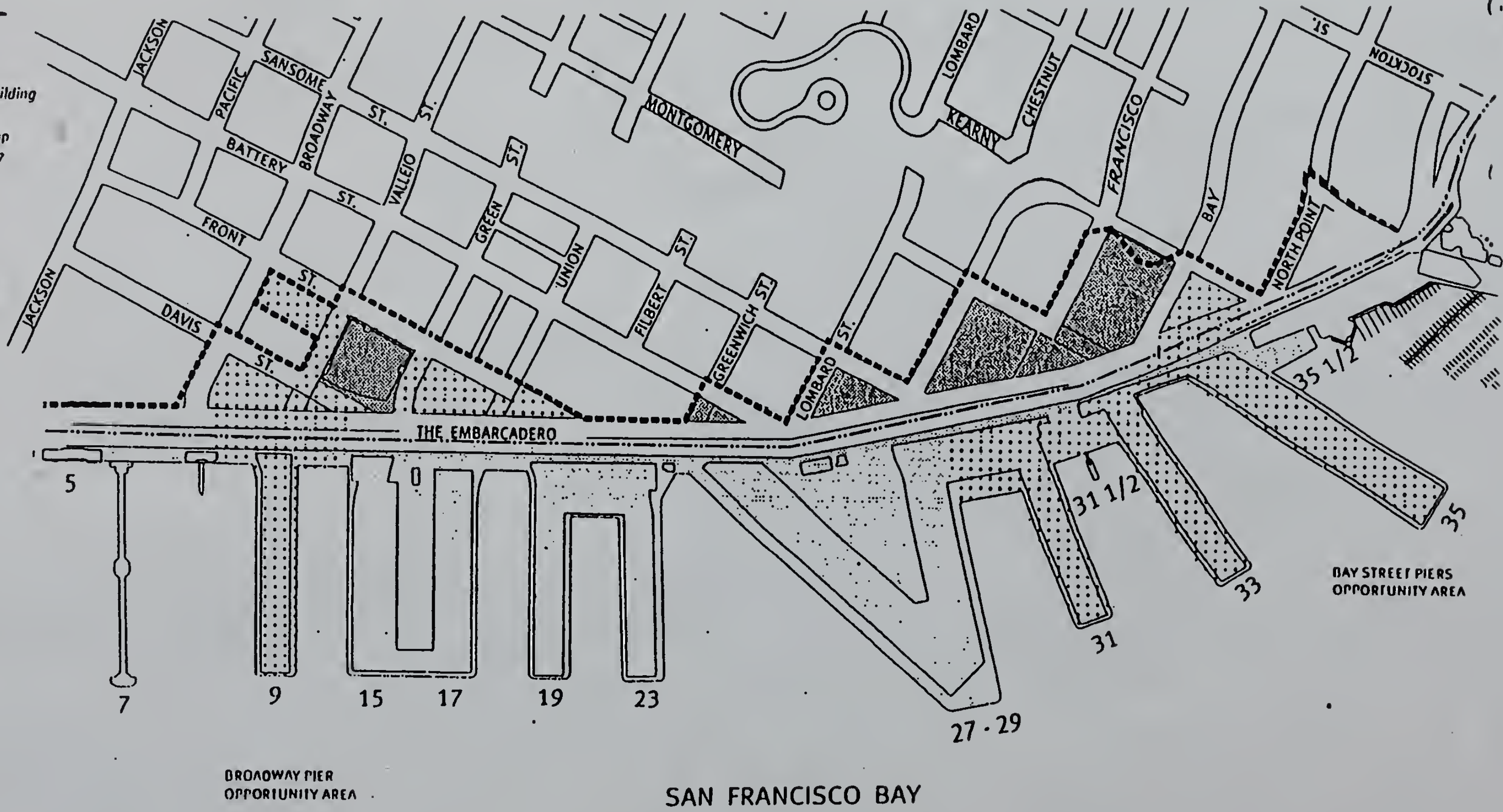
5 The table identifies acceptable maritime and maritime support activities best suited for the sites in this area. However, the Port Commission retains the authority to use Port sites for any maritime uses.

6 Unless otherwise indicated, an "E/I" indicates existing general office uses in structures on the pier deck, which are allowed as interim uses pursuant to the interim use policies in Chapter 3.

# THE NORTHEAST WATERFRONT SUBAREA

(←) See Ferry Building Waterfront Subarea Map on page 127

(→) See Fishermans Wharf Subarea Map on page 95


JACKSON
PACIFIC
SANSOME
BROADWAY
BATTERY
FRONT
DAVIS
ST.
VALLEJO
GREEN
UNION
MONTGOMERY
FILBERT ST.
GREENWICH ST.
LOMBARD ST.
KEARNY
LOMBARD
CHESTNUT
FRANCISCO
BAY
NORTH POINT
STOCKTON ST.
THE EMBARCADERO
5
7
9
15
17
19
23
27 - 29
31
31 1/2
33
35
35 1/2
BROADWAY PIER OPPORTUNITY AREA
BAY STREET PIERS OPPORTUNITY AREA
SAN FRANCISCO BAY

## Legend

- ⁙ Waterfront Mixed Use Opportunity Areas [a]
- ☐ Transitional Maritime Areas
- ☐ Other Public Access & Open Space Areas
- ▨ Existing (Long-Term) Commercial Areas

[a] Waterfront Mixed Use Opportunity Areas include any underlying existing and acceptable maritime, public access and open space and commercial areas. See Acceptable Land Use Tables for more detail.

[b] A Pier 15-29 Special Planing Study will be conducted to determine the location of a major new open space and open water area and Pier reconfiguration if the piers in this area no longer are needed for cargo-related use.

## Map Notes

1 Facilities located along the marginal wharf between piers north of the Ferry Building are generally described by the number of the pier on the left followed by "½". e.g. Pier 31½ is located between Pier 31 & Pier 33.

2 When the Waterfront (Embarcadero) Transportation Projects are completed, portions of certain streets abutting the Embarcadero will be vacated and included in adjacent seawall lots which are designated for potential new developments.

—·—·— San Francisco Municipal Railway (MUNI) 'F-Line': An extension of the F-Line from Market Street north to Fisherman's Wharf, featuring the City's historic streetcar collection.

■ ■ ■ ■ Waterfront Plan Project Area Boundary

SWL Seawall Lot

3 The maps are illustrative only. Please see the Acceptable Land Use Tables in Chapter 4 for [illegible]plete listing of acceptable permanent uses for each Port site.

NORTH

0 175 350 700

## Development Standards for Mixed Use Opportunity Areas

### Bay Street Pier Mixed Use Opportunity Area

The Bay Street Pier Mixed Use Opportunity Area includes Piers 35, 33, and 31 and Seawall Lot 314 located at the threshold of Fisherman's Wharf. Through careful integration of uses on Seawall Lot 314 and Pier 35, development of this Opportunity Area will establish a clear entry point to one of the most popular visitor destinations in the country.

Pier 35 is currently the Port's passenger cruise terminal. Although cruise passengers have long viewed San Francisco as one of the most beloved ports of call in the world, recent trends have limited the number of cruise calls to an average of 44 per year (see Appendix A). Nevertheless, industry officials consider this Opportunity Area to be a highly desirable and convenient location for the limited amount of cruise activity in San Francisco. On the other hand, Pier 35 lacks most amenities provided in modern cruise terminals and, because of its long and narrow shape and other physical constraints, passengers and ships cannot be efficiently served.

If San Francisco captures more cruise business in the future, a modern terminal facility could be developed by combining Piers 35 and 33, which would likely require some new fill between the piers. In combination with other attractions such as a public events facility, a modern cruise terminal could establish a visually exciting gathering place and extend the PortWalk throughout the complex.

Development on Seawall Lot 314 should relate to improvements on Piers 35 and 33. For example, a landside hotel, consistent with existing height and bulk limitations for the site, would complement a cruise terminal or public event's facility. Successfully designed and executed, these activities would frame The Embarcadero and provide a fitting entrance to Fisherman's Wharf.

If Pier 33 is not developed as part of a cruise terminal, or if Pier 35 ceases to be operated as a cruise terminal, these piers should still provide new entertainment and other assembly activities, such as a conference center. In addition, other maritime activities such as the excursion boat terminal should be retained.

Pier 33 currently operates primarily as a warehouse, with maritime and general offices in the adjacent bulkhead building. In recent years, a number of fish processing businesses have also occupied this facility. Pier 31 also currently operates as a warehouse facility and it's long-term future use will depend on changes in the cargo shipping operations on adjacent piers to the south, or new public attractions on Piers 33 and 35 to the north. These warehouses are valuable revenue-sources for the Port, in light of the steady market demand that exists for storage facilities. Warehousing should therefore be permitted as an interim use on these two sites.

## Development Standards

**Bay Street Pier Mixed Use Opportunity Area**

- If existing cruise terminal operations remain at Pier 35, improve facilities where feasible, by upgrading the decor of the terminal, and providing elevators, public access, and bon voyage areas.
- Promote shared uses in the cruise terminal which highlight the terminal's function as a gathering place for people and maintain year-round activity even when ships are not in port.
- If Pier 35 ceases to be used as a cruise terminal, permit entertainment and assembly activities that foster public enjoyment in the area.
- Any new cruise terminal, whether on Piers 33 and 35 or another site, should include the following features:
  - a Two berths.
  - b Separate areas that are sufficient in size to serve ships and passengers.
  - c Major public access features, including a bon voyage area.
  - d Sufficient taxi, bus and car drop-off and pick-up areas.
  - e Retail, exhibits, and other attractions to complement the cruise operations.
  - f Parking and other transportation programs to minimize traffic congestion in the area when passengers are embarking and disembarking.
- On Pier 35 and Seawall Lot 314, promote active, publicly-oriented uses which are designed to provide a fitting gateway to Fisherman's Wharf.
- Maintain Bay Street as a major view corridor.
- Retain and reuse the Pier 31, 33 and 35 bulkhead and connector buildings consistent with the historic preservation policies and site-specific design criteria in the Waterfront Design and Access Element. Develop criteria for rehabilitation and reuse of these historic structures.
- Promote excursion boats, water taxi, historic and ceremonial ship berthing and other maritime activities.
- Permit a broad range of interim uses (including warehousing) on Pier 31 because it is most likely to continue to operate as a support facility rather than as a primary location for major maritime or non-maritime activities.

## Broadway Pier Mixed-Use Opportunity Area

The Broadway Pier Mixed-Use Opportunity Area includes Pier 9, Seawall Lots 321, 322-I, 323, and 324. The seawall lots, which are currently used for surface parking, are among the most valuable of all the Port's real estate assets because of their prime location adjacent to downtown, the Pier 7 public access and fishing pier, and the Golden Gateway mixed-use residential neighborhood. These parcels have high near-term revenue-generating potential for the Port, and optimizing revenue should be a strong consideration in their development.

The neighboring mix of residential, office and small-scale retail activities suggests a broad range of use opportunities for the seawall lots in this Opportunity Area. In addition, Pier 7 provides a tremendous public open space amenity and focal point which will further enhance the character of new development.

With the demolition of the Embarcadero Freeway along Broadway, waterside activities can be visually and physically integrated with the Golden Gateway neighborhood. For example, Pier 9 is a desirable location for a sailing center where boating services, boat rentals, transient boat berthing (including berths for large yachts), and sailing events could take place on the south side of the pier in full view of onlookers strolling along The Embarcadero and Pier 7. A sailing center would complement the San Francisco Bar Pilots Association operations headquartered on the eastern portion of the pier. Expansion of public-oriented waterside activities will also create a more desirable setting for new commercial uses (including a hotel) or residential development on adjacent inland property, particularly Seawall Lots 323 and 324. These parcels are pivotal sites for weaving the waterfront into the broader City context.

To a large extent, development of Seawall Lot 321 likely will depend on the future of the Pier 15-17 cargo warehouse, a Transitional Maritime Area located immediately across The Embarcadero. Like Seawall Lots 323 and 324, Seawall Lot 321 is a key site for infill commercial and residential development which would extend City life out to The Embarcadero.

The seawall lots in this Opportunity Area are included in the Northeast Waterfront Historic District. Consistent with the Waterfront Design & Access Element, the design of new development must respect and enhance the historic and architectural character of adjacent development.

## Development Standards

**Broadway Pier Mixed-Use Opportunity Area**

- Consistent with the Waterfront Design & Access Element, design new developments to focus on and further enhance the Pier 7 public access and fishing pier.
- Consistent with the Waterfront Design & Access Element, design new seawall lot developments in a manner that respects the rich architecture in the Northeast Waterfront Historic District.
- Include design features in any new commercial or residential development on Seawall Lots 323 and 324 that highlight the intersection of Broadway and The Embarcadero which serves as an important access to Chinatown and North Beach, and as an orientation point along the waterfront.
- Encourage publicly-oriented recreation and entertainment activities on Pier 9 which are compatible with the San Francisco Bar Pilots Association administrative headquarters, water taxi operations, and berthing of pilot, tug and tow, and ferry and excursion boat vessels.
- Maintain and enhance views of the waterfront from Broadway.
- Design transportation access to seawall lot developments so as to minimize congestion on Broadway and The Embarcadero.

## Development Standards for Transitional Maritime Areas

**Piers 15-17, 19-23, 27-29**

Although cargo-related operations at these piers should be allowed to remain as long as the Port determines them to be economically and operationally viable, there is potential for the development of a mix of maritime, commercial, and public access uses on these piers, which also would meet the objectives for the Northeast Waterfront. As explained in Chapter 3, the purpose of the Pier 15-29 Special Planning Area Study is to resolve the following issues before the Port approves any new development on these piers: 1) whether the piers will continue to be viable exclusively for maritime uses; 2) the location and size of a major new "Northeast Wharf" open space within potential new maritime mixed use development in the Special Study Area; and 3) the location and configuration of piers, including removal of pier area to create open water.

Piers 27-29 and 15-17 provide key opportunities for publicly-oriented activities because of the large surface area of each facility. Either site could be a location for a public market or family-oriented entertainment facility, which could include educational and cultural themes that distinguish the attraction from others which are geared toward tourists.

Piers 27-29 also could provide a desirable site for a modern cruise terminal. The site is large enough to meet the operational requirements of a new terminal, and provide for other publicly-oriented commercial activities to maintain a lively presence in the area when ships are not in port.

### Development Standards

**Piers 15-17, 19-23, 27-29**

- Operate Piers 15-17 as a cargo-support warehouse facility as long as necessary, unless it is possible to relocate this operation to alternate upland locations, or to maritime areas in the southern waterfront.
- Operate Piers 19-23 as a duty-free Foreign Trade Zone warehouse serving the Port's cargo shipping and cruise businesses as long as necessary, unless it is possible to relocate it to alternate upland sites, and/or consolidate some of this activity with the Port's cruise terminal operations.
- Continue tug and tow berthing and repair operations on Piers 15-17 or other piers in the Northeast Waterfront as long as possible and practical.
- Permit accessory, non-maritime commercial uses or community facilities in bulkhead, connector, or incidental buildings fronting on the east side of The Embarcadero, if the space is not needed for maritime-related operations.

## Development Standards (cont.)

CONTINUED

- Pursuant to the General Policies of Chapter 3, conduct a Pier 15-29 Special Area Study if the Transitional Maritime Areas are no longer necessary for cargo shipping related uses, and pursue a mix of activities that achieve the following:
  - a Provide publicly-oriented commercial recreation uses such as family- oriented entertainment, incorporating cultural, educational or other themes that appeal particularly to residents of the City and the Bay Area.
  - b Include commercial and recreation maritime activities such as historic ships, excursion boats, or cruise operations as an integral part of the mix of uses, to the maximum feasible extent.
  - c Arrange and design uses on the piers to maximize public appreciation and enjoyment of the waterfront setting by offering new viewing opportunities, promoting waterborne transportation services, and including an integrated public access program.
  - d Provide varied public access improvements such as a PortWalk which organizes circulation on the pier, provides access along the pier perimeter to the maximum possible extent, incorporates plazas in which people can congregate, and includes landscaping and other treatments which enhance the aesthetic quality of public access features.
  - e Create a "Northeast Wharf" public open space on a site to be determined in the Pier 15-29 Special Planning Area Study.
  - f The removal of pier area to create open water.
- Plan new uses on the piers to relate to new development on adjacent seawall lots.
- Ensure that the exterior architectural and design aspects of new pier activities are sensitive to and enhance the rich historic industrial maritime character embodied in significant Port structures along The Embarcadero and the adjacent Northeast Waterfront Historic District.
- Promote public transit as a primary mode of transportation and maximize the efficient use of new and existing parking facilities.

## Development Standards for Other Existing or New Open Spaces and Public Access

**Pier 7**

- Provide improvements, such as public information kiosks, nearby public restrooms, and sales of refreshments from a limited number of pushcarts, to increase public use and enjoyment of this unique waterfront open space resource, while maintaining an orderly, uncluttered appearance.
- Improve regular maintenan[illegible] Pier 7.

Appendix C

# Glossary of Terms

**Academic Institutions** - Institutions or classrooms for educational purposes, including but not limited to: academic, professional, cultural, business, technical, industrial arts, fine arts or other types of education.

**Accessory Parking** - Parking which is associated with existing Port activities or which is provided as a requirement for new development.

**Artist/Designer Studios and Galleries** - Facilities for artisans and designers (e.g. artists, designers, craftpersons, graphic artists, sculptors, wood workers, etc.) including but not limited to: space for manufacturing/creating, exhibiting and/or selling of products (e.g. studios, galleries, workshops, warehouses), which shall not be used for residences unless all applicable local and state authorizations are obtained.

**Assembly and Entertainment** - Facilities for entertainment and attractions including but not limited to: band shells, auditoriums, theaters (cinemas and live performances), night clubs, amusement parks, conference, convention and event facilities, exhibition halls, public markets and children's entertainment.

**Bay Oriented Commercial Recreation and Public Assembly Uses** - Facilities specifically designed to attract large numbers of people to enjoy the Bay and its shoreline, such as restaurants, specialty shops and hotels. (*San Francisco Bay Plan*, p. 36)

**Break-bulk** - Freight which generally is made up of similar size pieces which is loaded into or unloaded from a ship's hold in small bulk quantities, usually loosely, on a pallet or in a cargo net. Breakbulk was the traditional method of cargo handling along the Port's finger piers before innovations in container cargo shipping.

**Bulkhead Buildings** - Structures, generally built on top of the seawall and spanning the width of the pier, which are the entrances to piers.

**Burton Act** - State legislation which sets the terms and conditions for the transfer of Port property to the jurisdiction of the City and County of San Francisco, subject to control and management by a local Port Commission. (*California Statutes*, Chapter 1333, 1968.)

**California State Lands Commission** - A State agency with jurisdiction over the lands granted in trust to the Port of San Francisco. Commission staff monitors Port activities and projects to ensure compliance with the *Burton Act* (legislation that transferred Port lands to the City) and the public trust doctrine.

**Cargo Shipping** - Primary, support and ancillary facilities for waterborne transport of cargo shipped in container boxes or in bulk (dry bulk, liquid bulk, break-bulk, neo-bulk) including but not limited to: shipping terminals and berths, cargo handling, storage and warehousing, equipment storage and repair facilities, cargo sourcing, container freight stations, freight rail and truck access, ship servicing, administrative functions, and employee support services, (e.g. training facilities, parking).

**Community Facilities** - Public safety and community service facilities, including but not limited to: fire and police stations, postal services, day care, health care, libraries, community meeting rooms, and medical emergency helipad.

**Connector Buildings** - Structures, generally built on top of the seawall north of China Basin Channel, most of which extend between bulkhead buildings.

**Container Cargo** - Cargo which is transported in standard sized boxes.

**Dry Bulk** - Dry loose freight, such as grain and various ores, which is loaded or unloaded via conveyor belts, spouts or scoops.

**Ferry & Excursion Boats and Water Taxis** - Primary, support and ancillary facilities for waterborne transportation (e.g. commuter ferries, water taxis, hovercrafts) or short-term excursions (e.g. charter boats, mini-cruises, sightseeing, gaming, dining and entertainment on the water) including but not limited to: passenger terminals and berthing areas, storage, employee or passenger parking, administrative functions, ship servicing areas, layover berths, fueling stations and other boat or passenger services.

**Fill** - As defined in the *McAteer-Petris Act* which created the Bay Conservation and Development Commission, fill means "earth or any other substance or material including pilings or structures placed on pilings, and structures floating at some or all times and moored for extended periods, such as houseboats and floating docks."

**Fill Credit** - A proposed concept whereby existing fill could be removed and relocated to another site.

**Fishing Industry** - Primary, support and ancillary facilities for commercial or sport fishing operations including but not limited to: fishing boat berths and harbors, fish processing, handling (e.g. cleaning and packing) and distribution facilities, support services (e.g. fuel docks, Fisherman's Wharf Chapel, fishing research and education facilities), storage, maintenance and administrative functions, and employee services (e.g. training facilities and parking).

**General Industry** - Facilities for enclosed and open air industrial activities, including but not limited to: recycling operations, automobile repair and related services, bio-remediation, sand and gravel operations, transmission facilities, and manufacturing operations.

**General Office** - Includes but is not limited to: administrative, management, executive, business service, research and development, and professional services for small and large companies.

**Historic Ships** - Primary, support and ancillary facilities for display of historic vessels including but not limited to: berthing areas, museum/exhibit and administrative space, storage maintenance and workshop space and employee and visitor parking.

**Hotel** - Facilities for overnight lodging, including hotels, boatels, bed and breakfast [except for overnight lodging on ships which is consistent with a primary water-dependent use (e.g. temporary or ceremonial berthing, recreational berthing, historic ships, etc.)]

**Liquid Bulk** - Liquid freight, such as petroleum or vegetable oil, which is shipped in tankers rather than in drums or other small, individual units.

**Maritime** - A general term used to describe industrial, commercial or recreation activities related to waterborne commerce, navigation and recreation, including but not limited to: cargo shipping, ship repair, ferries and excursion boats, cruises, recreational boating, historic ships, fishing industry, berthing.

**Maritime Office** - Administrative and business functions for any maritime industry including, but not limited to: import/export businesses, legal and professional services.

**Maritime Support Services** - Ancillary functions needed to support maritime activities including but not limited to: tug and tow operations, bar pilots, ship chandlers, associated parking and maintenance, equipment storage, repair and warehouse facilities, environmental services, Foreign Trade Zone and Port maintenance.

**McAteer-Petris Act** - An Act passed by the State legislative in 1969 which created the San Francisco Bay Conservation and Development Commission (BCDC).

**Museums** - Includes but is not limited to: facilities for exhibits on San Francisco history, maritime history, ongoing exhibitions, cultural and exhibit space, etc.

**Neo-bulk** - Freight such as autos, steel products and newsprint paper rolls which is shipped in large bulk quantities.

**Non-Accessory Parking** - Parking open to general public use which is not specifically to serve existing Port activities or required for new development.

**Non-Water Dependent Activities** - Activities and land uses which do not require access to the water in order to function.

**Open Space** - Includes but is not limited to: parks, wildlife habitat, wetlands, large plazas, tot lots, fishing piers and related public amenities.

**Parking** - Includes but is not limited to: surface parking lots or above or below grade garages. (See also Accessory Parking and Non-Accessory Parking.)

**Passenger Cruise Ships** - Primary, support and ancillary facilities for large, generally international passenger cruise vessels with sleeping accommodations typically for over 250 passengers (e.g. ships providing long-distance vacation and recreation voyages which may include gaming, dining and entertainment on board), including but not limited to: passenger terminals and berthing areas, waiting and customs areas, publicly accessible bon voyage and greeting areas, and passenger-serving retail, entertainment and commercial services, ship servicing areas, bus, taxi and visitor pick-up/drop-off and parking areas.

**Piers** - Pile-supported structures over water, which generally have more regulatory restrictions imposed on their use than other Port facilities. The fact that a Port facility is, or is not, commonly referred to as a "pier" does not necessarily mean it is in fact a Pier. The actual construction characteristics, as opposed to the common names of facilities, is the determining factor.

**Port-Priority Use and Port-Priority Use Areas** - The BCDC/MTC *Seaport Plan* designates areas that should be reserved for port priority uses, including marine terminals and directly-related ancillary activities such as container freight stations, transit sheds and other temporary storage, ship repair, and support transportation uses including trucking and railroad yards, freight forwarders, government offices related to the port activity, chandlers and marine services. Uses that are permitted within port-priority use areas may also include public access and public and commercial recreational development, provided they do not significantly impair the efficient utilization of the port area.

**PortWalk** - New public access walkways and amenities extending onto piers, where feasible, as major new mixed use pier developments occur that, together with public sidewalks and rights-of-way and pedestrian improvements under construction along The Embarcadero, will provide continuous pedestrian access through waterfront activity areas. PortWalk improvements will primarily be located north of China Basin, but also could be established south of China Basin where possible.

**Power Plants** - Facilities and utility installations to generate power including, but not limited to, cogeneration power plants.

**Proposition H** - A ballot measure adopted by San Francisco voters in November 1990 which imposed a moratorium on new "non-maritime" development pending completion of a land use plan for a portion of the waterfront property under the jurisdiction of the Port of San Francisco, and prohibited hotel developments or boatels on that property.

**Public Access** - Areas or features which are open to the public, often provided as part of new development, including but not limited to: esplanades, boardwalks, pedestrian access to piers, small plazas, visual or informational displays, kiosks, signage, public fishing and viewing areas and related public amenities.

**Public Trust** - Under the public trust doctrine, title to tidelands and lands under navigable waters (as existed when California became a state) is held in trust by the State for the benefit of the people of California and must be used for purposes of commerce, navigation and fishing as well as for environmental and recreational purposes. The Port of San Francisco is the trustee for public trust lands granted to the City by State legislation in 1968 (i.e. the *Burton Act*).

**Recreational Boating and Water Use** - Primary, support and ancillary facilities for recreational boating and other water sport enthusiasts (e.g. swimmers, kayakers and windsurfers) including but not limited to: sailing center for yachting events, swimming, rowing and boating clubs, marinas, visiting boat docks and moorings, boat rental facilities, boat launches, fueling stations, repair and dry storage facilities, administrative functions, visitor, boat trailer and employee parking, public restrooms, and other public facilities.

**Recreational Enterprises** - Facilities for non-maritime recreation-oriented activities including but not limited to: athletic fitness facilities, indoor and outdoor sports courts, jogging tracks, health and fitness centers and other non-maritime recreation amenities.

**Residential** - Includes but is not limited to: multi-family unit developments, and, in the southern waterfront, an RV park.

**Retail** - Retail sales of goods and services, including but not limited to: restaurants and other eating and drinking establishments, shops, personal services, dry goods, public and other markets, retail outlets, gas stations and carwashes.

**San Francisco Bay Conservation & Development Commission (BCDC)** - A state-created agency with authority to permit or deny any project in or over the San Francisco Bay or within 100 feet of the shoreline, after reviewing the project in light of specified criteria. BCDC's responsibilities include protecting San Francisco Bay from excessive fill and preserving the Bay waterfront for Bay-oriented or water-dependent uses.

**Seawall Lots (or "SWL")** - Parcels of land owned by the Port which generally lie inland of the seawall which separates land from the Bay. North of China Basin, seawall lots usually are located across The Embarcadero from the water (or along Jefferson Street in Fisherman's Wharf or near King Street in South Beach). South of China Basin, seawall lots more often abut the water, but they are not pile-supported structures like piers.

**Ship Repair** - Primary, support and ancillary facilities for repair, restoration, and maintenance of large and small vessels, including but not limited to: drydock and berthing areas, warehouses, workshop and storage areas, administrative functions, and employee support services, (e.g. training facilities, parking).

**Sports Facilities** - Facilities which accommodate professional sports events such as basketball, baseball, hockey and tennis, which also may be used for non-sport related performances and events, including but not limited to arenas and ballparks, with support and accessory activities such as food services, automobile, bus and taxi parking, pick-up and drop-off zones.

**Temporary & Ceremonial Berthing** - Primary, support and ancillary facilities for berthing of historic, military or other visiting vessels on a temporary basis including but not limited to: berthing and passenger greeting, bon voyage and waiting areas, bus, taxi and visitor pick-up/drop-off and parking areas.

**Transportation Services** - Facilities for land-based, water-borne or intermodal (e.g. connections between water and land transportation services) transportation operations, including but not limited to: transit and traffic facilities, areas for ticket sales, passenger information and waiting, bus, automobile, taxi, pedicab and horsedrawn carriage staging areas and pick-up and drop-off zones, and related administrative functions.

**Visitor Services** - Facilities and information services oriented to visitors, including but not limited to: programs providing education and information to acquaint visitors with current and historical activities of the Port, the City, maritime operations or similar programs.

**Warehousing/Storage** - Includes but is not limited to: facilities for storage generally in enclosed buildings, and related transport and distribution of general (non-maritime cargo) goods. Mini-storage warehouses are prohibited on piers or within 100 feet of the shoreline.

**Water-Dependent Activities** - Activities, businesses or industries which depend on a waterfront location to function, such as cargo-related activities, berthing of historic, ceremonial or other ships, ferry and excursion boat operations, fishing industry uses, maritime support uses, recreational boating and water use, ship repair, and water taxi docking.

**Water-Oriented Uses** - Under the *McAteer-Petris Act*, BCDC can permit Bay fill only for certain "water-oriented" uses specified in the law or "minor fill for improving shoreline appearance or public access to the Bay." The water-oriented uses the law permits include water-related industry, bridges, wildlife refuges, and water-oriented commercial recreation and public assembly. Housing and offices are not considered water-oriented uses.

**Wholesale Trade/Promotion Center** - Facilities for wholesale storage, promotion, sales and distribution of products, including but not limited to: exhibition and conference spaces, ancillary space for promotional displays and demonstrations, and marketing services, particularly those which enhance international trade.

# *Waterfront Land Use Plan* Amendments to Appendix A Excerpts

Note: The Port Commission adopted these Amendments by Resolution No. 00-62 on July 20, 2000. Deletions from prior text are shown by ~~strikeouts~~ , and Additions by underscores.

Page iii

*Delete Appendix E.*

Page 10

*Remove reference to Piers 27-29 in paragraph 1, third sentence:*
The Plan therefore protects existing cargo-related operations at Pier 15,-17, and 19-23 ~~and 27-29~~....

*Revise paragraph 1, last sentence:*
Other objectives guide new development to protect and enhance the historic maritime character of the area, highlight the area as a gateway to North Beach, Chinatown, and Fisherman's Wharf, build the Northeast Wharf plaza focussed on the Open Water Basin between Pier 19 and 27, and provide other public access amenities which highlight newly created points of interest.

Page 10

*Change The Ferry Building Waterfront, top of paragraph 1:*
The Ferry Building Waterfront is the focal center of the waterfront, extending from the Pier 5 pierhead/bulkhead building to ~~the site of~~ ~~the future~~ Rincon Park ~~at the south end of the Embarcadero Promenade~~ and the Rincon Point Open Water Basin.

Page 58

*Change Item 17:*
Maximize efficient use of new and existing parking facilities in a manner that does not hamper maritime operations and minimizes adverse impacts on public access.

*Modify last sentence of paragraph 1 under "Open Spaces and Public Access", and add additional sentence:*
Under the McAteer-Petris Act and BCDC Bay Plan policies, ~~open space is a form of~~ public access, i.e., open space oriented towards the Bay either physically or visually, is generally required, and may ~~which can~~ be created on replacement fill or on minor amounts of new fill in BCDC's Bay jurisdiction. Open Water Basins, both existing (opposite Rincon Park, and Broadway) and new (adjacent to the Northeast Wharf and Brannan Street Wharf plazas) are also identified on Map B.

Page 59A

*Changes Map B: Open Spaces and Public Access:*
Add a new shading to the Map Legend for "Piers Designated for Removal". Add another new shading to the Map Legend for "Open Water Basins". Shade remaining unshaded portions of Embarcadero Promenade between the

Agriculture Building and Pier 19 as an "Existing Open Space and Public Access" area.

*Add the following text under "Notes":*
The PortWalk is continuous between China Basin and Pier 35 and links the open spaces and public access on this map.

*Change the following numbered text items under "Notes"; the planned improvements are italicized:*
14 Pacific Bell Ballpark ~~planned~~ shoreline public access
*17A Brannan Street Wharf and Open Water Basin*
20 Embarcadero Promenade between Pier 22-1/2 and The Agriculture Building, and Rincon Point Open Water Basin
*22 Ferry Terminal public access improvements and partial removal of Pier 2*
*24 Pier ½ public access improvements and partial pier removal*
26 Pier 7 public access and fishing pier and Broadway Open Water Basin
*27A Views across open water between Piers 15 and 17*
*28A Northeast Wharf Park ~~plaza (site to be identified in Pier 15-29 Special Study)~~ and Open Water Basin*
*35 Fisherman's Wharf ~~Triangle Lot public access and open space improvements~~ opportunity to develop a major plaza through a planning process*

Page 61

*Change paragraph 1:*
To address existing shortcomings, the Waterfront Design & Access Element includes special emphasis on public access and open spaces. Policies in the Element call for creation of a "PortWalk", an integrated system of public access and open spaces through public and private investment, which includes a variety of open spaces, services and improvements to make them more attractive to the public. (See Chapter 3 of the Design & Access Element). The Port will be responsible for developing two new public plazas between Pier 35 and China Basin (the Northeast Wharf at Pier 27, and the Brannan Street Wharf, requiring the removal of Piers 34 and 36).

*Change paragraph 3*:
The main constraint to realizing this future has been insufficient ~~is the lack of~~ Port or City funds for these ambitious improvements. ~~While~~ Tthe Waterfront Transportation Projects have been paid for primarily with federal and state transportation ~~funds, many of the other open space improvements have yet to secure financing~~. The Port actively pursues state and federal grants to fund public access projects, such as the $500,000 grant it recently secured for public access improvements at Pier 47A in Fisherman's Wharf. The Port should make efforts to obtain City Recreation and Park Department funds for open space acquisition, renovation and maintenance improvements. ~~However, it is anticipated that there will be fewer public funding programs available in the future.~~ ~~As a result,~~ Under this plan, the Port will have the opportunity to undertake ~~need to rely on~~ new revenue-generating developments to help create and maintain open spaces and public access improvements. As part of a joint planning process to establish consistent Port and BCDC planning documents, the Port will establish a fund to remove Piers 24, 34, and 36, a portion of the Pier 23 shed, and the valley between Piers 15 and 17, and develop two new public plazas, the Northeast Wharf and Brannan Street Wharf plazas. Further details regarding the implementation of

these public open space improvements is provided in Chapters 4 (Northeast Waterfront and South Beach Waterfront Subareas) and 5.

Page 62

*Change Item 3:*
North of China Basin, route pedestrian paths and circulation in Open Spaces and Public Access areas in new development projects to create a "PortWalk" that maximizes connections with the Bay, the pedestrian promenade along The Embarcadero, and the regional Bay Trail as indicated in the Waterfront Design & Access Element. As part of the PortWalk, create a "Bayside History Walk" public access element in projects within rehabilitated historic pier sheds and bulkhead buildings. Bayside History Walk improvements may be interior or exterior public access features that provide unique paths, interpretive exhibits, amenities and views to access and appreciate the waterfront's historic architecture and maritime heritage.

*Change Item 4:*
Provide public access around the perimeter of piers, wherever safe and feasible as indicated in the Waterfront Design & Access Element and the BCDC Special Area Plan.

Page 64

*Change paragraph 2 of the Commercial Uses section:*
. .For example, before the Port would grant a long-term lease for a commercial uses on a pier, it would determine whether the use promoted the public trust by attracting people to use and enjoy the Bay or was an incidental part of an overall program of harbor development. If the proposed use was to be located within BCDC's Bay jurisdiction north of Pier 35 or south of China Basin, or between Pier 35 and China Basin but outside the existing pier footprint, the use would also have to be water-oriented or located within an historic structures listed on the National Register of Historic Places, in addition to meeting other criteria....

Page 66

*Change paragraph 4:*
New public transit service ~~planned as part of the Waterfront Transportation Projects~~ will greatly improve access to new developments on Port property....Wherever parking is provided, appropriate efforts should be made to maximize the efficient use of new and existing parking and minimize adverse impacts on public access pursuant to BCDC Special Area Plan Transportation and Parking Policies..

Page 69

*Change Item 7:*
Consistent with the Public Trust, encourage New Commercial Uses on piers or waterside properties, preferably as part of mixed-use developments, which include maritime activities and public access or open space amenities, primarily located in areas north of China Basin. In BCDC Bay jurisdiction north of Pier 35 and south of China Basin, or between Pier 35 and China Basin but outside the existing pier footprint, ensure that New Commercial Uses are water-oriented. ~~and meet~~ Developments are subject to other BCDC policies as set forth in the BCDC Special Area Plan.

Page 70

*Change Item 13:*

*Advance "e" to "c" in the hierarchy, in recognition of its importance:*

e Provide a continuous waterside pedestrian walk from Fisherman's Wharf to China Basin and in waterfront areas south of China Basin wherever possible.

*Add a new "d" describing the Bayside History Walk:*
d Create a Bayside History Walk to provide public access with interpretive amenities to quiet spaces behind and within historic maritime structures.

*Re-letter "c" and "d" to become "e" and "f".*

Page 83A *Amend Map D to 1) confine Bay Street Piers Mixed Use Opportunity Area to Piers 35 and 33; 2) create and shade a Chestnut/Lombard Street Piers Mixed Use Opportunity Area for Piers 31 and 27-29; and 3) remove shading from all piers proposed for full (Piers 24, 34 and 36) or partial removal (portions of Piers ½ and 2).*

Page 85 *Change "Subarea Boundary Map" to add "South Beach" and "China Basin" segments, separated by a dashed line, within the South Beach/China Basin Waterfront.*

Page 104 *Update summary paragraph:*
~~Three~~ Four of the piers in this subarea continue to support industrial cargo ~~shipping~~ warehousing and cargo support operations, which are priority uses in the Plan. However if, as expected, cargo activities ultimately consolidate in the Southern Waterfront, the Plan encourages reuse of these piers. Prior to new development on these piers, ~~a Special Planning Study will~~ the Port will conduct a review process to determine how to meet cargo and maritime needs~~, the location of a major new open space in the area, and location and allowable reconfiguration of these piers~~. Any new mixed use developments will include....

Page 105 *Change introduction paragraph to the Northeast Waterfront guidelines to reflect change in status of Piers 27-29:*
**Maximize opportunities for the retention of maritime operations.**
The Northeast Waterfront has undergone great change in the last 25 years, like much of the formerly industrial waterfront north of China Basin. While several of the finger piers still support maritime functions, only ~~three~~ four piers continue to function exclusively as cargo-shipping related facilities: ~~Piers 27-29 are operated as a newsprint shipping terminal and~~ Piers 15- and 17 ~~and 19-23~~ are used for cargo warehousing and transshipment, and Piers 19-23 for the Port's Foreign Trade Zone.

Page 108 *Change paragraph 1, commencing with second sentence:*
. . . This should be accomplished by including the historic piers and structures in a National Register Historic District to be nominated by the Port. On those piers surplus to industrial maritime needs, ~~integrating~~ other maritime activities should be integrated with commercial recreation activities. ~~on surplus piers, and requiring~~ with building and site designs which balance the need for new activities with the area's historic maritime character. Across The Embarcadero, ~~Fortunately,~~ many of the architecturally rich brick and concrete structures originally built for maritime and industrial operations have been renovated for modern office and retail uses, thereby preserving the character of the existing

City-adopted Northeast Waterfront Historic District, while establishing a strong economic base. . .

*Change paragraph 3:*
In spite of a shortage of waterside public amenities in the area, The Embarcadero is a magnet for bicyclists, skaters, walkers and joggers. While the Waterfront Transportation Projects will provide major aesthetic, transit and pedestrian improvements along The Embarcadero, there is a need to expand public access onto the piers themselves, including places for people to relax and enjoy the views, and experience the water's edge. A Northeast Wharf Open Water Basin should be created and the Broadway Open Water Basin maintained for the views they offer of and across the Bay.

*Change final paragraph:*
~~Where feasible, t~~The PortWalk should link the pier perimeters, offering pedestrians the pleasure of strolling leisurely from one activity to another, and connecting with the Waterfront Transportation Projects pedestrian improvements and the Pier 7 public access pier. The PortWalk would provide a new way for the public to enjoy the sights and sounds of the waterfront while allowing, but not requiring, interaction with the various entertainment and other activities which would be offered along the way. In addition, ~~if piers are no longer needed for cargo use between Piers 15 and 29, then a site should be planned for~~ the Pier 27 shed should be partially removed in order to create the Northeast Wharf, a major public open space that would be developed following ~~in conjunction with~~ new mixed use development on the site.

Page 110 *Change Table in left column to show Piers 15 and 17 as two piers:*
Piers 15-and 17

*Change Table Notes, Item 4:*
4 Uses are subject to further review for compliance with the Public Trust, BCDC and Planning Commission Policies, which will vary depending on factors specific to the use proposal such as ~~pier condition, extend of proposed repairs, and/or~~ the mix of uses, project design, any fill requirements, or whether the use is proposed within a National Register historic resource.

*Change Table Notes Item 5:*
5 The table identifies acceptable maritime and maritime support activities best suited to sites in this area. However, the Commission retains the authority to use Port sites for any maritime uses, subject to BCDC San Francisco Waterfront Special Area Plan policies regarding Open Water Basins and Other Open Water Areas, pp. __).

*Add Table Notes Item 7 and a notation for Historic Ships at Pier 27-29, 29 ½, in the Acceptable Land Use Table:*
7 Historic ships are not allowed at Pier 27, consistent with BCDC Special Area Plan policies.

Page 111 *Amend "The Northeast Waterfront Subarea" Map to 1) change shading of approximately one-half of Pier 23 shed and the Northeast Wharf plaza at the foot of Pier 27 from Transitional Maritime Areas to Other Public Access & Open*

*Space Areas shading; 2) change remaining shading at Piers 27-29 from Transitional Maritime Areas to Waterfront Mixed Use Opportunity Areas; 3) change shading between the Waterfront Restaurant and Pier 9 from Waterfront Mixed Use Opportunity Areas to Other Public Access & Open Space areas; 4) remove Transitional Maritime Areas shading from the valley between Piers 15 and 17; and 5) label the Northeast Wharf and Broadway Open Water Basins.*

*Delete footnote (b):*
~~(b) A Pier 15-29 Special Planning Study will be conducted to determine the location of a major new open space and open water area and Pier reconfiguration if the piers in this area no longer are needed for cargo related use.~~

**Page 112** *Change Bay Street Pier Mixed Use Opportunity Area to exclude Pier 31, which will be added within a new Chestnut/Lombard Street Pier Mixed Use Opportunity Area to be inserted before page 114.*

*Change paragraph 1, first sentence:*
The Bay Street Pier Mixed Use Opportunity Area includes Piers 35~~,~~ and 33~~, and 31~~ and Seawall Lot 314....

*Change paragraph 3, first sentence, to reflect retention of Piers 35 and 33:*
If San Francisco captures more cruise business in the future, a modern terminal facility could be developed ~~by combining Piers 35 and 33, which would likely require some new fill between the piers~~.

*Change last paragraph:*
Pier 33 currently operates primarily as a warehouse, with maritime and general offices in the adjacent bulkhead building. In recent years, a number of fish processing businesses have also occupied this facility. ~~Pier 31 also currently operates as a warehouse facility and its long-term future use will depend on changes in the cargo shipping operations on adjacent piers to the south, or new public attractions on Piers 33 and 35 to the north. These~~ This warehouses ~~are~~ is a valuable revenue sources for the Port, in light of the steady market demand that exists for storage facilities. Warehousing should therefore be permitted as an interim use ~~on these two sites~~.

**Page 113** *Change third bullet on right:*
- Retain and reuse the Pier ~~31,~~ 33 and 35 bulkhead and connector buildings and sheds consistent with the historic preservation policies and site-specific design criteria in the Waterfront Design and Access Element. Develop criteria for rehabilitation and reuse of these historic structures, and include Bayside History Walk elements.

**Pages 113A-B** *Add new pages for the new Chestnut/Lombard Street Piers Opportunity Area, consisting of Piers 27-31.*

Chestnut/Lombard Street Piers Mixed-Use Opportunity Area

The Chestnut/Lombard Street Piers Mixed-Use Opportunity Area includes Piers 31 and 27-29. Pier 27 was built relatively recently, in the 1970s, and along with the adjoining large valley area between the Pier 27 and 29 sheds, is in very sound condition. The 175-foot clear-span width within Pier 27 makes it a very valuable resource.

The neighboring mix of residential, office, athletic club and small-scale retail activities suggests a broad range of use opportunities. In addition, the Northeast Wharf plaza to be developed within a portion of the Pier 27 shed and adjoining valley, and the adjacent Northeast Wharf Open Water Basin, provide a tremendous public open space amenity and Bay views which will further enhance the character of new development.

Development should provide an integrated mix of maritime, commercial, open space and public access uses, which help to unite the waterfront with the rest of the City. There is opportunity for a unique and inviting waterfront mixed-use recreation project, integrating a varied mix of maritime and commercial uses and open space, including the Northeast Wharf plaza, oriented around active recreational pursuits. This mixed-use recreation could provide a venue for all San Franciscans and Bay Area residents to actively participate, individually or as groups, in diverse amateur recreational sports, physical fitness and related activities while enjoying the scenic waterfront setting. The Northeast Wharf plaza and the other open spaces included in such a development project would create opportunities for engaging in and viewing active recreational activities while enjoying expansive Bay views. New opportunities for recreational boating and other water uses may be created, while continuing maritime berthing alongside the remaining portion of Pier 27.

Development Standards

- Consistent with the Waterfront Design & Access Element, design new developments to respect and be authentic to the rich historic maritime industrial character of the Northeast Waterfront.
- Provide a mix of uses that reflect the cultural diversity of the City and the Bay Area, appeal to the local and regional population, and establish a daytime and nighttime presence, thereby providing entertainment and commercial recreation venues distinctly different from the more tourist-oriented activities found at Fisherman's Wharf.
- Include recreational boating, excursion boats, water taxis, historic and ceremonial ship berthing and other maritime uses to the maximum feasible extent. Provide facilities for a wide variety of active recreational activities; skateboard/rollerblade facilities and swimming and related aquatic sports are encouraged.
- Arrange and design uses on the Site to maximize public appreciation and enjoyment of the waterfront setting by offering new viewing opportunities, and to maximize visual connections and physical contact with the water.
- Create an approximately 2 acre "Northeast Wharf" public plaza on Pier 27, requiring removal of about 56,000 square feet of the Pier 27 shed. The Plaza design should be consistent with criteria in the Waterfront Design & Access Element, and should complement new development on the site. Provide unobstructed views from the Beltline Railroad Office Annex across the Northeast Wharf plaza to the Bay.

- Provide vistas from Lombard Street and The Embarcadero across the Northeast Wharf plaza to the Northeast Wharf Open Water Basin and the Bay.
- Provide a network of lively, usable open spaces, ranging from intimate to large-scale, indoors and outdoors, including Bayside History Walk elements. These open spaces should be oriented to on-Site and on-Bay recreational activities, both active and passive.
- Orient new development on Piers 27 – 31 toward The Embarcadero, and acknowledge the terminus of Lombard Street with a framed view of the Bay.
- Enhance connections throughout the site by maximizing the transparency of building walls and creating pedestrian passageways through and between buildings.
- Allow adjacent commercial uses (e.g., active uses such as shops, cafes, boat and skate rentals, kiosks) to spill into and activate the Northeast Wharf plaza and other open spaces, providing interest and enjoyment for users.
- Retain and reuse the historic bulkhead buildings at Piers 29 and 31, as well as the Pier 29½ connector building and the Beltline Railroad Office Annex, consistent with the historic preservation policies and site-specific design criteria in the Waterfront Design and Access Element.
- Promote the use of public transit as a primary mode of transportation. Minimize the intensity of automobile activity by minimizing on-site parking, and maximize the use of new and existing off-site parking facilities, consistent with development needs and minimizing adverse impacts on public access.
  - a Arrange and design on-site parking facilities so that they are either enclosed or otherwise screened from view from The Embarcadero and the Bay.
  - b Arrange and design vehicle access to the Site so that it does not generate significant new traffic congestion on The Embarcadero, or queuing along The Embarcadero.

Page 114

*Change paragraph 3, commencing with second sentence:*
For example, Pier 9 is a desirable location for ~~a sailing center where~~ boating services, boat rentals, transient boat berthing (including berths for large yachts), and sailing events could take place on the south side of the pier in full view of onlookers strolling along The Embarcadero and Pier 7. ~~A sailing center~~ This would complement the San Francisco Bar Pilots Association operations headquartered on the eastern portion of the pier....

*Change paragraph 4, first sentence:*
To a large extent, development of Seawall Lot 321 likely will depend on the future of the Piers 15- and 17 cargo warehouses....

Page 115

*Change Development Standards in column 2, first and second bullet:*

- Encourage publicly-oriented recreation and entertainment activities on Pier 9, and a Bayside History Walk element, which are compatible with the San Francisco Bar Pilots Association....
- Maintain and enhance views of the waterfront from Broadway across the Broadway Open Water Basin.

Page 116 *Change Development Standards for Transitional Maritime Uses, top of page:*

Piers 15~~-~~,17, 19-23~~, 27-29~~

Although cargo-related operations at these piers should be allowed to remain as long as the Port determines them to be economically and operationally viable, there is a potential for the development of a mix of maritime, commercial, and public access uses on these piers, which also would meet the objectives for the Northeast Waterfront. As explained in Chapter 3, the purpose of the Transitional Maritime Area designation is to provide a process for determining ~~Pier 15-29 Special Planning Area Study is to resolve the following issues before the Port approves any new development on these piers: 1)~~ whether the piers will continue to be viable exclusively for maritime uses, before allowing long-term non-maritime development or other changes. ~~; 2) the location and size of a major new "Northeast Wharf" open space within potential new maritime mixed use development in the Special Study Area; and 3) the location and configuration of piers, including removal of pier area to create open water.~~

~~Piers 27-29 and 15-17 provide key opportunities for publicly oriented activities of the large surface area of each facility. Either site could be a location for a public market or family-oriented entertainment facility, which could include educational and cultural themes that distinguish the attraction from others which are geared toward tourists.~~

~~Piers 27-29 also could provide a desirable site for a modern cruise terminal. The site is large enough to meet the operational requirements of a new terminal, and provide for other publicly oriented commercial activities to maintain a lively presence in the area when ships are not in port.~~

*Change "Development Standards" subheading to separate Piers 15 and 17, and delete "27-29"*

Piers 15~~-~~,17, 19-23~~, 27-29~~

- Operate Piers 15~~-~~ and 17 as ~~a~~ cargo-support warehouse facilit~~y~~ies as long as necessary, unless it is possible to relocate these operations to alternate upland locations, or to maritime areas in the southern waterfront.

*Change third bullet:*

- Continue tug and tow berthing and repair operations on Piers 15~~-~~ and 17 or other piers in the Northeast Waterfront as long as possible and practical.

Page 117 *Change Development Standards bullets; first bullet, and subsequent items:*

- Pursuant to the General Policies of Chapter 3~~, conduct a Pier 15-29 Special Area Study~~ conduct a review process to determine whether the Transitional Maritime Areas are no longer necessary for cargo shipping related uses, and pursue a mix of activities that achieve the following:

e ~~Create a "Northeast Wharf" public open space on a site to be determined in the Pier 15-29 Special Planning Area Study.~~

~~f The removal of pier area to create open water.~~ Remove a portion of the Pier 23 shed bayward of the connector building to create a Northeast Wharf Open Water Basin. and the valley between Piers 15 and 17. to expand Bay views.

*Change last bullet in right column:*

- Promote public transit as a primary mode of transportation, and maximize the efficient use of new and existing parking facilities while minimizing adverse impacts on public access.

# APPENDIX D

## Excerpts from the Waterfront Design and Access Element

Please note that the full document is available for viewing
at any time during normal business hours from 8 am to 5 pm
at the Port offices at Pier 1, San Francisco, CA 94111
Please ask for Floristine Johnson (415-274-0526).

# Amended Waterfront Land Use Plan Excerpts

The Waterfront Plan in Chapter 2 sets forth a goal for "An Evolving Waterfront, Mindful of its Past and Future".

"Improvements should respect and enhance the waterfront's historic character, while also creating opportunities for San Franciscan's to integrate Port activities into their daily lives.

"The evolution of the waterfront from its beginnings to the present reflects San Francisco's colorful history. The waterfront should continue to serve as a repository for memories of past events, while also providing a stage for new experiences.

"Recognizing that the waterfront will continue to evolve, a balance should be maintained between continued maritime activities, expanded public activities, protection of the waterfront's unique historic and architectural setting and resources, opportunities for nature and habitat protection and restoration, and financial responsibility. Conversion of existing waterfront infrastructure (e.g., the bulkhead and connector building esplanade along the northeast waterfront) to new mixed use developments will be aided by, and should recognize, the value of the City's rich working-maritime historic context, and should ensure that significant bulkhead buildings and other historic architecture of the waterfront, identified in the urban design guidelines called for in this plan, are preserved in the development process, wherever feasible.

"The Plan seeks to preserve past and allow for future waterfront memories by providing for or encouraging:

Identification of significant historic resources that should be preserved as discussed in the Waterfront Design & Access Element.

Restoration of the Ferry Building to its original grandeur, and creative reuse of other significant historic waterfront structures (identified in the urban design guidelines) to preserve the waterfront's historic fabric and context.

New life for the City's historic fishing industry at Fisherman's Wharf.

Continuation of the historic ship museum at the Hyde Street Pier, and additional historic ships interspersed along the waterfront.

Adaptive reuse of historic and architecturally significant structures such as the three Union Iron Works buildings at Pier 70.

Private investment to create new public gathering places and business opportunities along the waterfront...

...Nomination of a National Register Historic District between Pier 45 and Pier 48."

Waterfront Plan Chapter 2 sets forth a goal for "Urban Design Worthy of the Waterfront Setting".

"The design of new developments should be of exemplary quality and should highlight visual and physical access to and from the Bay, while respecting the waterfront's rich historic context and the character of neighboring development.

"....New development should reflect and enhance the richness of the waterfront's setting. The varied land uses, building scale and historic and architectural resources in neighboring districts reflect the City's diversity and establish a context in which complementary yet imaginative design should be integrated into Port improvements. The Plan furthers these objectives by requiring that new development projects meet the requirements of the Waterfront Design & Access Element which expands upon the following waterfront objectives:

Maintain existing building height and bulk limitations and encourage building designs that step down to the shoreline.

Encourage more physical connections between the land and the water....

Improve views of the working waterfront....

Protect and frame near and distant views to and from the Bay, particularly along major City streets.

Identify significant bulkhead and other historic resources that should be preserved.

*Northeast Waterfront*

A Waterfront Plan Northeast Waterfront objective is to "Protect and enhance the historic maritime character of the area. New development in the Northeast Waterfront should be sensitive to the rich maritime history that is preserved in the Northeast Waterfront Historic District, the ribbon of bulkhead and connector buildings along The Embarcadero, and the remaining maritime activities on many of the piers. This should be accomplished by including the historic piers and structures in a National Register Historic District to be nominated by the Port. On those piers surplus to industrial maritime needs, ~~integrating~~ other maritime activities should be integrated with commercial recreation activities, ~~on surplus piers, and requiring~~ with building and site designs which balance the need for new activities with the area's historic maritime character. Across The Embarcadero, ~~Fortunately,~~ many of the architecturally rich brick and concrete structures originally built for maritime and industrial operations have been renovated for modern office and retail uses, thereby preserving the character of the existing City-adopted Northeast Waterfront Historic District while establishing a strong economic base. Five Port seawall lots are included in the Historic District, four of which are undeveloped. Development of any one of these parcels must therefore include a design which reinforces and enhances the unique character and history embodied in the Historic District."

The Waterfront Plan's Northeast Waterfront Development Standards include:

"Retain and reuse (in the Bay Street Area) the Pier ~~31,~~ 33 and 35 bulkhead and connector buildings and sheds consistent with the historic preservation policies and site-specific design criteria in the Waterfront Design and Access Element. Develop criteria for the rehabilitation and reuse of these historic structures, and include Bayside History Walk elements."

A new Chestnut/Lombard Street Piers Opportunity Area, consisting of Piers 27-31:

"Chestnut/Lombard Street Piers Mixed-Use Opportunity Area

"...Development Standards

- Consistent with the Waterfront Design & Access Element, design new developments to respect and be authentic to the rich historic maritime industrial character of the Northeast Waterfront...
- Provide a network of lively, usable open spaces, ranging from intimate to large-scale, indoors and outdoors; including Bayside History Walk elements...
- Retain and reuse the historic bulkhead buildings at Piers 29 and 31, as well as the Pier 29½ connector building and the Beltline Railroad Office Annex, consistent with the historic preservation policies and site-specific design criteria in the Waterfront Design and Access Element...

The Waterfront Plan's Northeast Waterfront Development Standards also include:

"Consistent with the Waterfront Design and Access Element, design new seawall lot developments (in the Broadway Pier area) in a manner that respects the rich architecture in the Northeast Waterfront Historic District."

"Ensure that the exterior architectural and design aspects of new pier activities (on Piers 15 through 23 ~~29~~) are sensitive to and enhance the rich historic industrial maritime character embodied in significant Port structures along The Embarcadero and the adjacent Northeast Waterfront Historic District."

## Design & Access Element Excerpts

*Significance of Waterfront Historic Resources*

"The waterfront's historic resources help to create San Francisco's identity. Their significance is derived from:

*A Convergence of Cultural and Natural Resources*

"San Francisco's history is rooted in the waters surrounding the City: the San Francisco Bay to the east and the vast Pacific Ocean to the west. Nowhere is this fact more evident than on the waterfront--a man-made landscape which illustrates various phases of human involvement with these important natural resources and where historic buildings and structures have functional and physical links to the Bay and ocean.

*Associations with Historical Events*

"The waterfront's historic resources are associated with events that determined broad patterns of human development: waves of migration to California and the West, San Francisco's emergence as a major commercial center, the development of international trade routes (especially the opening of the Panama-Pacific Canal), and the victories of World Wars I and II.

*Distinctive Design*

The waterfront reflects historical trends in engineering, transportation, architecture and civic design. Some historic resources are individually distinctive. Groups of historic buildings on the waterfront, such as the finger piers and decorative bulkhead buildings, also make important contributions to the City's overall urban form, producing some of our best-known San Francisco "cityscapes."

*Port-wide Historic Resources Policies*

"The Waterfront Land Use Plan envisions 'an evolving waterfront, mindful of its past and future,' which will 'continue to serve as a repository for memories of past events, while also providing a stage for new experiences.' To achieve that vision, the following policies apply throughout the Port's jurisdiction to guide preservation of significant historic resources.

*Formal Recognition*

"Nominate significant historic resources to the National Register of Historic Places. The Port will work with the State Historic Preservation Office, local historic preservation agencies, and other waterfront constituencies, to nominate significant resources for formal recognition individually and as historic districts, including a Northeast Waterfront National Register Historic District from Piers 45 to 48, and to identify options for coordinating policy for these resources, including programmatic agreements for two areas: Fisherman's Wharf to China Basin, and Pier 70."

*Preservation*

"Preserve and adaptively reuse significant historic resources where feasible. Nationally recognized methods for adaptively reusing historic buildings are provided by *The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (Secretary's Standards)."

### *Information*

"Help San Franciscans understand and enjoy their heritage, by providing interpretive signage and informational displays about the waterfront's cultural and natural history. Depending on the character of specific subareas, interpretive exhibits may focus on maritime, commercial, labor, or industrial history. They will be provided throughout the waterfront. Key locations for exhibits are Fisherman's Wharf, the Ferry Building, ~~and~~ Pier 70, and along the Bayside History Walk."

### *Waterfront Character*

"Require development of the waterfront to be compatible with historic resources. The design, materials, style, and detailing of new buildings, street furniture and other public improvements should enhance rather than conflict with historic buildings. The character of historic architecture was considered in developing other urban design policies presented in this chapter and specific subarea criteria for avoiding design conflicts."

### *Port-wide Historic Resources Summary*

"The nation's official inventory of significant historic resources is the National Register of Historic Places (National Register). ~~Three~~ Four Port buildings--the Ferry Building, Agriculture Building, Pier 1 and Beltline Roundhouse--are already listed on the National Register. In addition, the Seawall... is eligible for the National Register. ~~In 1996, the Architectural Resources Group (ARG) prepared a historic resources database report (the ARG report) for the Port which identified other waterfront buildings... as potentially eligible for listing on the National Register, either individually or as contributors to an historic district. The ARG report recommended consideration of two potential National Register historic districts: one extending from Pier 45 in Fisherman's Wharf to Pier 48 in China Basin, and another at Pier 70. The purpose of the ARG report was to create an inventory of potentially eligible resources; ARG's scope of work did not include analysis of policy issues. Further study must therefore take place to determine how the Port should balance historic preservation goals with other goals of the Waterfront Land Use Plan and with state-mandated public trust responsibilities to promote maritime commerce, navigation and fisheries, and to protect natural resources and develop recreational facilities for public use.~~ Port staff are preparing a nomination for a National Register Historic District for the Pier 45 to 48 area, including but not limited to the Ferry Building, Agriculture Building, Beltline Roundhouse and Office Annex, Fire Boat House, Seawall, Pier 43 Ferry Arch and Piers 1-5, 9, 15-23, 29-35, 45, 26-28, 38 and 48 in consultation with the State Office of Historic Preservation. Further analysis is underway for the Pier 70 area as part of initiating a request for development proposals."

### *Fisherman's Wharf to China Basin Historic Resources Policies*

"The waterfront between Fisherman's Wharf and China Basin was created by filling portions of the Bay to support industrial maritime uses. The historic Seawall runs under the east edge of the Embarcadero, forming the edge between land and water. North of Pier 45, vestiges of San Francisco's early fishing industry contribute to the character of Fisherman's Wharf. From Pier 45 to 48, twelve intact "finger piers" (out of a total of forty-nine piers constructed) and fourteen historic bulkheads remain from harbor projects completed prior to 1938. The finger piers' long, rectangular form and timber or steel-framed sheds accommodated the berthing and loading of breakbulk ships at a time when San Francisco dominated international shipping on the West Coast. The piers also served passengers traveling by boat.

"The bulkhead buildings extend along The Embarcadero and, in several locations, are joined to the next bulkhead building by a connector building. The bulkheads served as office space and as entrances to the piers. As contributors to a design plan initiated during the "City Beautiful" era, the bulkheads' purpose was to beautify and bring a sense of grandeur to the waterfront, as befitting a major seaport. The building program spanned more than two decades and included a variety of architectural styles--beginning with simple Mission Revival bulkheads south of the Ferry Building and continuing with monumental Neoclassical bulkhead buildings to the north.

"In recognition of the concentration and collective form of historic resources between Fisherman's Wharf and China Basin, the following... provides policies and follow-up steps for groups of resources identified by building type.... Further preservation planning will be completed in cooperation with the State Historic Preservation Office, local preservation organizations, and other waterfront constituencies, and will include consideration of maritime use needs, financial feasibility, and other goals of the Waterfront Land Use Plan."

*Preservation to The Secretary's Standards*

"Preserve, rehabilitate and adaptively reuse the following resources consistent with *The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (Secretary's Standards): The Ferry Building, Agriculture Building, Beltline Roundhouse, and Fireboat House; Bulkhead Buildings and Connectors 1-5; Pier Shed at Pier 1; Bulkhead Buildings and Pier sheds at Piers 45 and 48. Pier 45 was upgraded and seismically retrofit in 1995 and seismic retrofit of Pier 48 is scheduled for completion in 1997. Rehabilitation and reuse of the Ferry Building is a top priority of the Waterfront Land Use Plan.

"Next Step: Evaluate preservation efforts for these buildings, to ensure consistency with the Secretary's Standards."

*Bulkhead Buildings and Pier Sheds*

"Retain and reuse the historic bulkhead buildings at Piers 9, 15, 17, 19, 23 (partial), 29, 31, 33, 35, 26, 28, and 38, the Ferry Arch, and the Neoclassical connector buildings (Piers 29½ and 33½).

"Next Step: Develop criteria for rehabilitation and reuse of these resources, identifying some or all for preservation consistent with the Secretary's Standards, and providing interim protection from alterations inconsistent with the Secretary's Standards until these criteria are adopted."

### *~~Piers, Pier Sheds, and~~ Fishing Industry Buildings*

"Further evaluate ~~the historic piers and pier sheds, and~~ specific Fisherman's Wharf buildings associated with the early fishing industry, including analysis of the potential for rehabilitation, adaptive reuse, and economic development.

"Next Step: Further evaluate ~~pier sheds on Piers 1, 9, 15, 19, 23, 31, 33, 26, 28, 38, and~~ specific Fisherman's Wharf buildings associated with the early fishing industry (the fishhandling building on the north side of Fish Alley, shed buildings at 2909, 2915, and 2921 Jones Lane between Jefferson Street and Pier 47, and Fisherman's Grotto No. 9 at 2851 Taylor Street), considering historic significance, architectural features, relationship to other resources, economic development, City pattern, structural condition, financial feasibility and compatibility of reuse with maritime activities, views, and public access, and with other goals of the Waterfront Land Use Plan, to develop recommendations for preservation, reuse and/or replacement. Consider these recommendations in the formulation of development proposals."

APPENDIX E

# CITY AND COUNTY OF SAN FRANCISCO

WILLIE L. BROWN, JR., MAYOR

# LEASE NO. L-

BY AND BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

THROUGH THE SAN FRANCISCO PORT COMMISSION

AND

_______________________________________

**DOUGLAS F. WONG**
**Executive Director**

SAN FRANCISCO PORT COMMISSION

Michael Hardeman, President
Kimberly Brandon, Vice President
Michela Alioto-Pier, Commissioner
Sue Bierman, Commissioner
Wilfred Hsu, Commissioner

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# LEASE

THIS OFFICE LEASE (the "Lease"), dated for reference purposes only as of _______, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), operating by and through the SAN FRANCISCO PORT COMMISSION ("Port"), as landlord, and ___________, a _________________, as tenant ("Tenant").

1. **Leased Premises.**

Port hereby leases to Tenant and Tenant hereby hires from Port that certain real property comprising approximately _______________ rentable square feet in Suite _______ located at __________________ (the "Building") in the ROUNDHOUSE PLAZA office complex, Seawall Lot 318, in the City and County of San Francisco, State of California, as shown in Exhibit A attached hereto and made a part hereof. Said real property and all improvements and additions thereto and alterations thereof are hereinafter referred to as the "Premises." For purposes herein, "rentable square feet" means the actual square footage area of the office, using the BOMA International standard for office measurement, plus a "load" factor of twenty percent (20%) which "load" factor represents Tenant's "pro rata share" of the common areas in the ROUNDHOUSE PLAZA office complex, said "pro rata" share being the ratio determined by dividing the square footage of the common areas in the ROUNDHOUSE PLAZA office complex by the actual square footage of the areas not comprising the common areas.

2. **Term of Lease.**

The term of this Lease shall be for ____ months and shall commence on _____________ (the "Lease Commencement Date") and terminate at midnight on ____________ (the "Termination Date").

3. **Rent.**

In consideration for the rights hereinabove granted Tenant will pay to Port, in the manner herein described, the following rent:

a. **Monthly Rent.**

Tenant shall pay rent to Port for the Premises during the term hereof in the amount of ______________________ ($_______) per month. Tenant shall pay monthly rent on or before the first day of each calendar month throughout the term beginning __________ (the "Rent Commencement Date"). If the Rent Commencement Date is other than the first day of the month, or the Termination Date is other than the last day of the month, the monthly rent for those months shall be prorated on a daily basis, based on a thirty (30) day month.

b. **Manner of Payment.**

All payments due from Tenant to Port under this Lease shall be made to Port without abatement, deduction, setoff, prior notice or demand, except as otherwise provided, in lawful money of the United States of America at Port's address for notices as set forth in Paragraph 25(d) of this Lease, or to such other person or at such other place as Port may from time to time designate in writing to Tenant.

c. **Rent Adjustments.**

If this Lease is in effect on the anniversary of the Rent Commencement Date, and each succeeding anniversary of the Rent Commencement Date, the amount of monthly rent payable by Tenant shall be increased on each such anniversary of the Rent Commencement Date to reflect any increase in the cost of living, which adjustment shall be determined as follows:

(1) The cost of living index shall mean the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index ("CPI Index") for All Urban Consumers, All Items (1982-84 = 100), San Francisco-Oakland-San Jose. The Base Month is _____________, _____. If the aforesaid index is no longer published, Port shall use such index as is substantially similar in nature to the present publication. Nothing in this Paragraph 3(c) shall be deemed to convey any rights exceeding those set forth in Paragraph 2.

(2) On each anniversary of the Rent Commencement Date, should this Lease be in effect on that date, the CPI Index for the calendar month one (1) month prior to the anniversary date shall be compared

to the CPI Index for the calendar month one (1) month prior to the Rent Commencement Date. The amount of monthly rent payable by Tenant shall be increased by the percentage increase, if any, in the CPI Index. In no event shall the monthly rent be less than the amount set forth in Paragraph 3 (a) or than as previously adjusted pursuant to this Paragraph.

d. Additional Rent.
In addition to the amount of the monthly rent, Tenant shall pay, or cause to be paid and discharge or cause to be discharged when the same shall become due, as additional rent, all taxes, assessments, insurance premiums, operating and maintenance charges and other amounts, liabilities and obligations of every description which Tenant assumes or agrees to pay or discharge pursuant to this Lease, together with every fine, penalty, interest or other charge which may be added for non-payment or late payment, whether payable to Port or other persons or parties designated herein. If Tenant fails to pay or discharge any such amount, liability or obligation, Port shall have all rights, powers and remedies provided herein or by law in the case of non-payment of the monthly rental.

e. Late Charges.
Tenant acknowledges that late payment by Tenant to Port of rent or other sums due under this Lease will cause Port increased costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, a charge equivalent to one and one-half percent (1-1/2%) of all rent, charges and fees, or any portion thereof, due and unpaid for more than fifteen (15) days, will be paid by Tenant for each month that such rent, charges and fees, or any portion thereof, remain due and unpaid, plus any attorneys' fees incurred by Port by reason of Tenant's failure to pay rent or other charges, or both, when due under this Lease. Such charges shall be computed from the date on which such rent, charges and fees first became due. The parties agree that such late charges represent a fair and reasonable estimate of the cost which Port will incur by reason of any late payment by Tenant.

4. Security Deposit.
On or before the Lease Commencement Date, Tenant shall deliver to Port a security deposit in an amount equal to two months' rent. The security deposit shall be in the form of cash only. Said deposit shall be held by Port as a partial guarantee for the future payment of future rent, the payment of any and all damages suffered by Port by reason of the tenancy by Tenant, and the full and faithful performance of any and all covenants and agreements of this Lease to be observed or performed by Tenant. Whenever the monthly rent is increased, the amount of the security deposit shall also be increased to equal twice such increased monthly rent. Any increase in the security deposit shall be delivered to Port on the same date that such increase in the rent is first due. In the event Tenant fails to perform or observe any of the provisions of this Lease to be performed or observed by it, then, Port may, but shall not be obligated to, use, apply, or retain the whole or any part of the security (1) to the extent of any sum due to Port, or (2) to make any required payment on Tenant's behalf, or (3) to compensate Port for any expense or damage caused by Tenant's default, and Tenant shall immediately upon demand pay Port a sum equal to the portion of the security deposit expended or applied by Port as provided by this Paragraph 4. Port's obligations with respect to the security deposit are those of a debtor and not a trustee, and Port may commingle the security deposit or use it in ordinary business. Port shall not be required to pay Tenant interest on the security deposit. Nothing contained in this Paragraph 4 shall in any way diminish or be construed as waiving any of Port's other remedies set forth in this Lease or provided by law or equity.

5. Use of Premises.
The Premises shall be used for general office purposes and for no other purposes. Changes in the type or class of business or changes in other uses shall be made only upon the express written consent of Port.

6. Restrictions on Use; Compliance with Law.
Tenant shall not use or permit the Premises, or any part thereof, to be used for any purposes other than the purposes set forth in Paragraph 5 of this Lease. Tenant shall not perform any act which will cause a cancellation of any insurance policy covering the Premises or any part thereof.

Tenant, at Tenant's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations, and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, which shall impose any duty upon Port or Tenant with respect to the use, occupation or alteration of the Premises. Tenant further understands and agrees to be responsible and comply with 42 USC §12101, et seq., (the "Americans with Disabilities Act") within its leased Premises. Failure to comply with any such law, ordinance, rule or regulation shall constitute a material breach of this Lease. Tenant shall not create a public or private nuisance on the Premises, or allow any sale by auction upon the Premises, or commit or suffer to be committed any waste upon the Premises. Tenant shall not obstruct or interfere with the rights of Port's other tenants.

Tenant understands and agrees that Port is entering into this Lease in its capacity as a landowner with a proprietary interest in the Premises and not as a regulatory agency of City with certain police powers. Port's legal status as an agency of City shall in no way limit the obligation of Tenant to obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Premises, including Port. By entering into this Lease, Port is in no way modifying or limiting the obligation of Tenant to cause the Premises to be used and occupied in accordance with all laws, rules, orders, ordinances, directions, regulations and requirements.

7. Alterations and Improvements.

a. Tenant has inspected the Premises or caused an inspection to be made on its behalf, and accepts and is leasing the Premises in its "as is" condition as of the Lease Commencement Date and is not relying on any representations or warranties made by Port or any representative of Port as to the present or future physical condition of the Premises. Port specifically disclaims any representations or warranties as to the seismological fitness of the Premises.

b. All alterations, additions, or improvements to the Premises shall be subject to the following conditions, which Tenant covenants to observe and perform:

(1) Tenant shall not make nor cause or suffer to be made any alterations or improvements in the Premises, including but not limited to, the installation of any trade fixtures affixed to the Premises, until Tenant shall have procured and paid for all Port, municipal and other governmental permits and authorizations of the various municipal departments and governmental agencies having jurisdiction over the Premises, including, but not limited to, any building or similar permits required by Port or its Chief Harbor Engineer in the exercise of its jurisdiction with respect to the Premises.

(2) All work shall be done in a good and workmanlike manner and in compliance with the applicable building and zoning laws, terms of and conditions imposed on any permit or authorization for the Premises, including, but not limited to, compliance with disability accessibility standards pursuant to Title 24, CCR, California Building Code, and the Americans with Disabilities Act.

(3) All work shall be prosecuted to completion with reasonable dispatch, unavoidable delays excepted.

(4) At the completion of any work described in this paragraph, Tenant shall furnish to Port one reproducible "as built" drawing of all alterations, additions or improvements made in the Premises.

c. All capital improvements or any other alterations, additions, or improvements on the Premises which may not be removed without substantial injury to the Premises shall immediately upon construction become part of the realty, shall be owned by Port and shall, at the end of the term hereof, remain on the Premises without compensation to Tenant unless Port first waives its right under this Lease in writing. At Port's election, Tenant shall be obligated at its own expense to demolish and remove any or all alterations, additions and improvements to the Premises that Tenant has made and to repair, in good and workmanlike fashion, any damage occasioned thereby.

d. In addition to any other remedy available to Port, Port may require Tenant to remove, at Tenant's expense, any or all alterations, additions or improvements not approved by Port under the provisions of this paragraph; and Port may require Tenant to repair in good workmanlike fashion any damage occasioned thereby at Tenant's expense. Tenant shall pay to Port all special inspection fees as set forth in San Francisco Building Code for inspections of work performed without required permits.

e. At the termination of this Lease, Tenant shall leave the Premises free and clear of all debris and in as good condition as when leased and subsequently improved, excepting reasonable wear and tear. Tenant shall repair any damage to the Premises for which Tenant is liable under this Lease. If Tenant fails to remove any improvements, equipment, furniture or trade fixture when requested to do so by Port or fails to leave the property in the condition required herein, Port will remove such items and correct such conditions at Tenant's expense and charge such costs against the security deposit. Tenant shall be required to pay any expenses or portions thereof not compensated by the security deposit.

## 8. Utilities and Services.

Heat, light, electricity, and janitorial service will be supplied by Port on the days and in usual and ordinary amounts generally supplied for other space in the Building. Special demands for any of the above services, including the cost of installing, maintaining and repairing any such special service, shall be at the expense of Tenant. Port shall not be liable in damages or otherwise for any failure or interruption of any utility service, including without limitation telephone service, furnished to the Premises. No such failure or interruption shall entitle Tenant to terminate this Lease.

Tenant will not, without the written consent of Port, use any apparatus or device in the Premises, including without limitation, electronic data processing machines and machines using current in excess of 110 volts, which will in any way increase the amount of electricity usually furnished or supplied for use of the Premises as general office space. If Tenant shall require electric current in excess of that usually furnished or supplied for use of the Premises as general office space, Tenant shall first procure the written consent of Port, which Port may refuse, to the use thereof, and Port may cause an electric current meter to be installed in the Premises so as to measure the amount of electric current consumed for any such other use. The cost of any such meter and of installation, maintenance, and repair thereof shall be paid for by Tenant and Tenant agrees to pay to Port promptly upon demand therefor by Port for all such electric current consumed, as shown by said meter, at the rates charged for such service by the City and County of San Francisco or the local public utility, as the case may be, furnishing the same, plus any additional expense incurred in keeping account of the electric current so consumed. It is agreed that any and all utility improvements shall become part of the realty and are not trade fixtures.

## 9. Maintenance.

Tenant shall keep the Premises and appurtenances, including glazing, in good and sanitary order, condition and repair, damage thereto by reason of ordinary wear and tear excepted. Tenant shall not make, nor cause or suffer to be made any repairs or other work for which a permit is required by the San Francisco Building Code or by any rule or regulation of Port without first obtaining a permit therefor.

## 10. Damage and Destruction

### a. Damage and Destruction.

If the Premises or the Building is damaged by fire or other casualty, then Port shall repair the same provided that funds for such repairs are appropriated by Port, in its sole discretion, for such purpose and that such repairs can be made within a reasonable time, within the sole discretion of the Port, after the date of such damage (the "Repair Period"), should this Lease be in effect at that time. In the event such conditions are satisfied, this Lease shall remain in full force and effect except that Tenant shall be entitled to a proportionate reduction of monthly rent during the period of such repairs based upon the extent to which such damage and the making of such repairs materially interferes with Tenant's use or occupancy of the Premises.

Port shall use its best efforts to notify Tenant within ninety (90) days after the date of such damage, should this Lease be in effect at that time, whether or not such repairs can be made within the Repair Period, and Port's determination thereof shall be binding on Tenant. If such repairs cannot be made within the Repair Period, Port shall have the option to notify Tenant of: (a) Port's intention to repair such damage and diligently prosecute such repairs to completion within a reasonable period after the Repair Period, subject to appropriation of funds, in which event this Lease shall continue in full force and effect and the monthly rent shall be reduced as provided herein; or (b) Port's election to terminate this Lease as of a date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by Port. In case of termination, the monthly rent shall be reduced as provided above, and Tenant shall pay such reduced monthly rent up to the date of termination.

If at any time during the last twelve (12) months of the term of this Lease, the Premises or the Building is damaged or destroyed, then either Port or Tenant may terminate this Lease by giving written notice to the other party of its election to do so within thirty (30) days after the date of the occurrence of such damage; provided, however, Tenant may terminate only if such damage or destruction substantially impairs its use or occupancy of the Premises for general office purposes. The effective date of termination shall be specified in the notice of termination, which date shall not be more than thirty (30) days from the date of the notice.

Notwithstanding anything to the contrary in this Lease, Port shall have no obligation to repair the Premises or the Building in the event the damage or destruction is attributable to any act or omission of Tenant, its agents, employees or invitees. In no event shall Port be required to repair any damage to Tenant's personal property or any paneling, decorations, railings, floor coverings, or any tenant improvements or alterations installed or made on the Premises by or at the expense of Tenant. In the event the Premises or the Building is substantially damaged or destroyed and Port intends to rebuild for public purposes inconsistent with this Lease, Port may terminate this Lease upon written notice to Tenant.

**b. Waiver.**

Port and Tenant intend that the provisions of this Paragraph govern fully in the event of any damage or destruction and accordingly, Port and Tenant each hereby waives the provisions of Section 1932, subdivision 2, and Section 1933, subdivision 4, of the Civil Code of California or under any similar law, statute or ordinance now or hereafter in effect.

## 11. Eminent Domain.

**a. Eminent Domain.**

If all or any part of the Premises are taken under the power of eminent domain or any transfer in lieu thereof, this Lease shall terminate as to the part so taken as of the date of taking. In the case of a total taking of the Premises, this Lease shall terminate as of the effective date of such taking. In the case of a partial taking, either Port or Tenant may terminate this Lease as to the balance of the Premises by written notice within thirty (30) days after such date; provided, however, that Tenant may only terminate the Lease if the partial taking substantially impairs its use and occupancy of the balance of the Premises. In the event of a partial taking of the Premises which does not result in a termination of this Lease, the monthly rent to be paid thereafter shall be proportionally reduced. If any substantial part of the Building is taken under the power of eminent domain or any transfer in lieu thereof, Port shall have the right to terminate this Lease by written notice to Tenant within thirty (30) days of the date of the taking.

In the event of any taking, Port shall be entitled to any amount awarded in connection therewith, and Tenant shall have no claim against Port for the value of any unexpired term of this Lease. Tenant may make a separate claim for compensation for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's personal property.

**b. Temporary Takings.**

Notwithstanding Paragraph 11(a) above, if a taking occurs with respect to all or any part of the Premises for a limited period of time, this Lease shall remain unaffected thereby and Tenant shall continue to pay rent and to perform all of the terms, conditions and covenants of this Lease. Tenant shall be entitled to receive that portion of any award representing compensation for the use or occupancy of the Premises during the term hereof up to the total rent owing by Tenant for the period of the taking, and Port shall be entitled to receive the balance of any award.

**c. Waiver.**

Port and Tenant intend that the provisions of this Section govern fully in the event of condemnation and accordingly, Port and Tenant each hereby waives any right to terminate this Lease in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar law, statute or ordinance now or hereafter in effect.

12. Insurance.

a. Required Insurance Coverage.

Tenant, at its sole cost and expense, shall maintain, or cause to be maintained, throughout the Term of this Lease, the following insurance:

(1) General Liability Insurance.

Comprehensive or commercial general liability insurance, with limits not less than One Million Dollars ($1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, independent contractors, broadform property damage, fire damage, legal liability not less than Two Hundred Fifty Thousand Dollars ($250,000.00), personal injury, products and completed operations;

(2) Automobile Liability Insurance.

Comprehensive or business automobile liability insurance with limits not less than One Million Dollars ($1,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for owned, non-owned and hired vehicles, which will apply only if Tenant uses automobiles in connection with its tenancy on the Premises.

(3) Workers' Compensation Insurance

Workers' Compensation Insurance with employer's liability limit not less than One Million Dollars ($1,000,000.00) each accident, but only if Tenant has employees as defined by the California Labor Code.

b. Claims-Made Policies.

If any of the required insurance is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term and without lapse for a period of three years beyond the Lease expiration, to the effect that, should occurrences during the Term give rise to claims made after expiration of this Lease, such claims shall be covered by such claims-made policies.

c. Annual Aggregate Limits

If any of the required insurance is provided under a form of coverage which includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be double the occurrence limits specified above.

d. General Insurance Matters.

All liability policies required by this Lease shall name as additional insureds "THE CITY AND COUNTY OF SAN FRANCISCO AND THE SAN FRANCISCO PORT COMMISSION AND THEIR OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES," and shall be primary to any other insurance available to the additional insureds. All policies shall provide thirty (30) days prior written notice of cancellation, non-renewal or reduction in coverage in person or by mail to Port's address as set forth in Paragraph 25(d) of this Lease. All policies shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability. Tenant shall furnish certificates of insurance in a form acceptable to Port evidencing all coverages required above prior to the Lease Commencement Date with complete copies of policies upon Port's request.

Approval of the insurance by Port shall not relieve or decrease the liability of Tenant hereunder. The coverages described in this Paragraph 12 shall not be construed to be a substitute in any respect for Tenant's obligations under this Lease. Tenant and Port shall periodically review the amount of insurance carried pursuant to this Paragraph 12 but in any event not less than every year during the term of this Lease. If it is found to be the general commercial practice in City to carry insurance in amounts substantially greater or lesser than the amounts carried by Tenant with respect to risks comparable to those associated with the Premises, the amounts carried by Tenant may at the discretion of Port be increased or decreased to conform to such general commercial practice.

13. Indemnity and Exculpation.

a. Indemnity.

Tenant shall indemnify and hold Port, City, and their agents, officers, directors, contractors and employees (collectively, "Agents") harmless from, and, if requested, shall defend them against any and all claims, direct or vicarious liability, damage, injury or loss arising directly or indirectly out of: (a) any injury to or death of any person, including employees of Tenant, or damage to or destruction of any property occurring in, on or about the Premises, or any part thereof, from any cause whatsoever, or (b) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease, or (c) the use, occupancy or condition of the Premises or the activities therein by Tenant, its Agents, or clients, customers, invitees, guests, members, licensees, assignees and subtenants (collectively, "Invitees"). This indemnity shall be enforceable regardless of the negligence of Port or City, and regardless of whether liability without fault is imposed or sought to be imposed on Port or City. This indemnity shall be enforceable except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on, or validly retroactive to, the date of this Lease. This indemnity includes all such loss, damage, injury, liability or claims as described above, or loss predicated in whole or in part, upon the active or passive negligence of Port, City or their Agents. This indemnity shall exclude claims, liability, damage or loss resulting solely and exclusively from the willful misconduct of Port or City which is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, Tenant, its Agents or invitees.

In addition to Tenant's obligation to indemnify Port and City, Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Port and City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent. Tenant's obligation to defend shall arise at the time such claim is tendered to Tenant by Port and/or City and shall continue at all times thereafter.

The foregoing indemnity obligation of Tenant shall include without limitation, indemnification from all loss and liability, including attorney's fees, court costs and all other litigation expenses. This indemnification by Tenant shall begin from the first notice that any claim or demand is or may be made. The provisions of this section shall survive the termination of this Lease with respect to any damage, destruction, injury or death occurring prior to such termination.

b. **Exculpation.**

Tenant, as a material part of the consideration to be rendered to Port, hereby waives any and all claims against Port, City and their officers, agents and employees, and agrees to hold Port, City and their officers, agents and employees harmless from any claims for damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by persons in, upon or about said Premises for any cause arising at any time, including without limitation all claims arising from the joint or concurrent negligence of Port or City or their Agents, but excluding any intentionally harmful acts committed solely by Port or City.

c. **Hazardous Materials Indemnification.**

Tenant shall indemnify, defend and hold Port, City and their officers, agents and employees harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses which arise during or after the term of this Lease as a result of the handling of Hazardous Material on the Premises by Tenant, its agents or invitees, including without limitation, all costs of investigating and remediating the same, damages for diminution in the value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, damages arising from any adverse impact on marketing of any such space and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees.

This indemnification of Port and City by Tenant includes, but is not limited to, costs incurred in connection with any investigation of site conditions or any clean-up, remediation, removal or restoration work requested by Port or required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or groundwater in, on or under the Premises or in any improvements. Without limiting the foregoing, if the presence of any Hazardous Material in, on, under or about the Premises caused or permitted by Tenant results in any contamination of the Premises, Tenant, at its sole expense, promptly shall take all action that is necessary to return the Premises to the condition existing prior to the introduction of such Hazardous Material in, on, under or about the Premises; provided that Port approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions could not potentially have any material adverse effect upon the Premises.

Tenant's obligations hereunder shall survive the termination of this Lease.

**14. Assignment and Subletting.**

**a.** Tenant shall not, without the prior written consent of Port, assign or hypothecate this Lease or any interest herein or sublet the Premises, or any part thereof, nor allow any person to occupy or use any portion of the Premises. Any of the foregoing acts without consent shall be void. Port shall not unreasonably withhold its consent to an assignment or sublease of this Lease.

**b.** Tenant may, subject to the prior written consent of Port and subject to the provisions of Paragraph 5 hereof, sublet portions of the Premises not occupied by Tenant, provided that the following conditions are met:

(1) Any revenues Tenant receives pursuant to each such sublease or other agreement that exceed Tenant's costs for the space sublet shall be paid to Port. Prior to Port's approval of such sublease, Tenant's actual costs for the sublet space shall be established by letter agreement between Port and Tenant.

(2) Tenant shall deliver to Port at least thirty (30) days prior to the effective date of each sublease or other agreement a copy of such sublease or agreement together with documentation adequately identifying the subtenant and the business activity to be conducted on the Premises.

(3) Each sublease or other agreement shall contain an indemnification clause and waiver of claims provision identical to that required by this Lease. Each assignee or sublessee shall assume all obligations of Tenant under this Lease and shall be jointly and severally liable with Tenant for payment of rent and performance of all terms, covenants and conditions to be performed by Tenant hereunder.

(4) Each sublease or other agreement shall contain a clause naming as additional insureds under all liability and other insurance policies City, Port and their officers, agents, employees and representatives and acknowledging Port's rights to demand increased coverage to normal amounts consistent with the subtenant's business activities on the Premises.

(5) If for any reason whatsoever this Lease and the leasehold of Tenant under this Lease are terminated, such termination shall operate to terminate all the existing subleases entered into by Tenant.

**c.** A consent to one assignment, subletting, occupation or use by one person shall not be construed as a consent to a concurrent or subsequent assignment, subletting, occupation or use by another. No interest in this Lease shall be assignable as to Tenant's interest by operation of law without Port's prior written consent.

**15. Liens.**

Tenant shall keep the Premises and the improvements thereon free from any liens arising out of any work performed, materials furnished or obligations incurred by Tenant. In the event that Tenant shall not, within twenty (20) days following the imposition of any such lien, cause the same to be released of record, Port shall have, in addition to all other remedies provided by this Lease or by law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All sums paid by Port for such purpose and all reasonable expenses incurred by Port in connection therewith shall be payable to Port by Tenant on demand.

**16. Possessory Interest Taxes.**

Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest. Tenant further recognizes and understands that any sublease or assignment permitted under this Lease and any exercise of any option to renew or other extension of this Lease may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Tenant agrees to pay taxes of any kind, including, but not limited to, possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by law, all of which shall be paid when the same become due and payable and before delinquency. Tenant will not allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same. San Francisco Administrative Code Sections 23.6-1 and 23.6-2 require that the City and County of San Francisco report certain information relating to this Lease, and any renewals thereof, to the County Assessor within sixty (60) days after any such transaction and that Tenant report certain information relating to any assignment of or sublease under this Lease to the County Assessor within sixty (60) days after such assignment or sublease transaction. Tenant agrees to provide such information as may be requested by the City or Port to enable the City to comply with this requirement within thirty (30) days of a request in writing by Port to do so.

### 17. Entry.

Port and City and their officers, agents and employees shall have the right to enter into or upon the Premises at any reasonable time for the purpose of reasonable inspection, or inventory, or both, and when otherwise deemed reasonably necessary for the protection of their interests. Tenant waives all claims against Port and City and their officers, agents and employees for damages caused by Port's or City's reasonable exercise of their rights hereunder. Tenant agrees that it may make no claim against Port nor demand any rebate of rent for any loss of occupation or quiet enjoyment of the Premises occasioned by Port or City's reasonable exercise of its right of entry, inspection or inventory. Port will provide Tenant with twenty-four (24) hours' notice before entering into or upon the Premises pursuant to this Section.

### 18. Default.

In the event that (i) Tenant shall fail to pay to Port any rent or other sum payable hereunder when due, and such default continues for a period of three (3) days after notice by Port; or (ii) Tenant shall fail to observe, keep or perform any of the other terms, covenants, agreements or conditions contained in this Lease and required to be observed or performed by Tenant, and such default continues for a period of thirty (30) days after notice by Port, or beyond the time reasonably necessary for cure if such default is of a nature to require more than thirty (30) days to remedy; or (iii) Tenant shall become bankrupt or insolvent or make a transfer in fraud of creditors, or make an assignment for the benefit of creditors, or bring or have brought against Tenant any action or proceedings of any kind under any provision of the Federal Bankruptcy Act or under any other insolvency, bankruptcy or reorganization act and, in the event such proceedings are involuntary, Tenant is not discharged from the same within sixty (60) days thereafter; or (iv) a receiver is appointed for a substantial part of the assets of Tenant and such receiver is not discharged within sixty (60) days; or (v) Tenant shall vacate or abandon the Premises; or (vi) this Lease or any estate of Tenant under this Lease shall be levied upon by any attachment or execution and such attachment is not stayed or lifted within sixty (60) days; then any such event shall constitute an event of default by Tenant. Upon the occurrence of any event of default by Tenant, Port may, at its option and without any further notice or demand, in addition to any other rights and remedies provided under this Lease or by law or equity, do any one or more of the following:

**a.** Give notice of termination to Tenant; and on the date specified in such notice this Lease shall terminate.

**b.** In the event of any such termination of this Lease, Port may then or at any time thereafter, re-enter the Premises and remove therefrom all persons and property and again possess and enjoy the Premises, without prejudice to or limitation of any other remedies that Port may have by reason of Tenant's default or of termination.

**c.** In the event of any such termination of this Lease, and in addition to any other rights and remedies Port may have, Port shall have all of the rights and remedies of a landlord provided by California Civil Code Section 1951.2. The amount of damages which Port may recover in the event of such termination shall include, without limitation, (1) the worth at the time of award, computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%) of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss that Tenant proves could be reasonably avoided; (2) all reasonable legal expenses and other related costs incurred by Port following Tenant's default; (3) all reasonable costs incurred by Port in restoring the Premises to good order and condition, or in remodeling, renovating or otherwise preparing the Premises for reletting; and (4) all reasonable costs (including, without limitation, any brokerage commissions and legal fees and expenses), incurred by Port in reletting the Premises.

**d.** In the event Tenant breaches this Lease and abandons the Premises and Port does not elect to terminate this Lease by reason of such breach and abandonment, this Lease shall continue in full force and effect, and, in addition to any other rights and remedies Port may have, Port shall have all of the rights and remedies of a landlord provided by California Civil Code Section 1951.4, including, without any obligation to Tenant to do so, Port may also relet the Premises as the agent of Tenant and for Tenant's account for such term, which may extend beyond the term of this Lease, and upon such other terms and conditions as Port may deem appropriate. Port may do all things reasonably necessary for such reletting, including repair, remodeling and renovating of the Premises; and Tenant shall reimburse Port on demand for all costs incurred by Port in connection therewith. In the event Port relets the Premises, Port shall apply any sums received upon such reletting in the following order of priority: (1) to the payment of all rent and sums unpaid under this Lease from Tenant to Port; (2) to the payment of all reasonable legal expenses and other related costs incurred by Port as a result of Tenant's default; (3) to the payment of all reasonable costs incurred by Port in restoring the Premises to good order and repair, or in remodeling, renovating or otherwise preparing the Premises for reletting; (4) to the payment of all reasonable costs (including, without limitation, any brokerage commissions, legal fees, and expenses) incurred by Port in reletting the Premises; and (5) the balance, if any, to the payment of future rent as the same may become due under this Lease. Notwithstanding any failure by Port to elect to terminate this Lease, Port may at any time elect to terminate this Lease either for any previous breach or default hereunder by Tenant which remains uncured or for any subsequent breach or default.

**e.** After terminating this Lease, Port may remove any and all personal property of Tenant located on or about the Premises and place such property in a public or private warehouse or elsewhere at the sole cost and expense of Tenant. In the event that Tenant shall not immediately pay the cost of storage of such property after the same has been stored for a period of thirty (30) days or more, Port may sell any or all thereof at a public or private sale in such manner and at such times and places as Port in its sole discretion may deem proper, without notice to or demand upon Tenant. Tenant hereby waives all claims for damages that may be caused by Port's removing or storing or selling the property as provided herein; and Tenant shall indemnify and hold Port harmless from and against any and all losses, costs and damages, including without limitation costs of suit and attorneys' fees of Port occasioned by any such removal, storage or sale. Tenant hereby appoints Port as Tenant's attorney-in-fact with the rights and powers necessary in order to effectuate the provisions of this Paragraph.

**f.** Port shall have the right to cause a receiver to be appointed in any action against Tenant to take possession of the Premises, or to collect the rents or profits derived therefrom, or both. The appointment of such receiver shall not constitute an election on the part of Port to terminate this Lease unless written notice of such intention is given to Tenant.

### 19. Waiver of Breach.

The waiver by Port of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition with respect to any prior or subsequent breach of the same or any other term, covenant or condition of this Lease; nor shall any custom or practice which may grow up between the parties hereto in the administration of the provisions of this Lease be construed to waive or to limit in any way the right of Port to insist upon the performance by Tenant in strict accordance with all of said terms, covenants, agreements and conditions. The subsequent acceptance of rent hereunder by Port shall not be deemed to be a waiver of any preceding breach of any term, covenant or condition of Lease, other than the failure of Tenant to pay the particular rental so accepted, regardless of Port's knowledge of such preceding breach at the time of the acceptance of such rent. No act or omission by either Port or Tenant shall constitute a modification of this Lease, it being understood by the parties hereto that the provisions of this Lease may be amended, altered or otherwise modified only by the written agreement of the parties.

### 20. Surrender of Premises.

Tenant shall, upon termination of this Lease, peaceably and quietly leave, surrender and yield up to Port, all and singular, the Premises in the condition required by Paragraph 7(e) above and if requested execute and deliver to Port a good and sufficient quitclaim deed to the rights arising hereunder.

### 21. Mineral Reservation.

The State of California, pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the Premises. In accordance with the provisions of said statute, Port and Tenant shall and hereby do grant to the State of California the right to explore, drill for and extract said subsurface minerals, including oil and gas deposits, from an area located by the California Grid System, Zone 3, beginning at a point where X equals 1,454,000 and Y equals 478,000 extending 2,500 feet south, thence 1,500 feet east, thence 2,500 feet north and thence 1,500 feet west, ending at said point of beginning.

22. **Hazardous Material.**

a. As used herein, the term "Hazardous Material" shall mean any substance, waste or material which has been determined by any state, federal, or local government authority to be capable of posing a risk of injury to health, safety and property including, but not limited to, all of those materials, wastes and substances designated as hazardous or toxic by the United States Environmental Protection Agency, the United States Department of Labor, the United States Department of Transportation, the California State Department of Health Services and/or any other governmental agency now or hereafter authorized to regulate materials and substances in the environment. As used herein, the term "handle" shall mean using, generating, processing, producing, packaging, treating, storing, emitting, discharging or disposing.

b. **Requirements for Handling**. Neither Tenant nor its agents or invitees, shall handle in, on or about the Premises any Hazardous Material without the prior written consent of Port, which consent shall not be unreasonably withheld so long as Tenant demonstrates to Port's reasonable satisfaction that such Hazardous Material is necessary to Tenant's business, will be handled in a manner which strictly complies with all environmental laws and will not materially increase the risk of fire or other casualty to the Premises. Notwithstanding the foregoing, Tenant may handle on the Premises janitorial or office supplies or materials in such limited amounts as are customarily used for general office purposes so long as such handling is at all times in full compliance with all environmental laws.

c. **Tenant Responsibility**. Subject to the restrictions set forth in Paragraph 22b hereof, Tenant shall handle all Hazardous Material discovered on the Premises as a result of Tenant's construction activities related to Tenant's alterations to the Premises, or introduced on the Premises by Tenant, its agents or invitees, in compliance with all environmental laws. Notwithstanding the foregoing, Tenant shall not be responsible for the safe handling of Hazardous Material introduced on the Premises during the term of this Lease by City, Port or their agents. Tenant shall protect its employees and the general public in accordance with all environmental laws. Port may from time to time request, and Tenant shall be obligated to provide, information reasonably adequate for Port to determine that any and all Hazardous Material is being handled in a manner which complies with all environmental laws. Port shall have the right to inspect the Premises for Hazardous Material at reasonable times, pursuant to Paragraph 17 hereof.

d. **Requirement to Remove**. Prior to termination of this Lease, Tenant, at its sole cost and expense, shall remove any and all Hazardous Material introduced in, on, under or about the Premises during Tenant's occupancy of the Premises. Further, Tenant, at its sole cost and expense, shall remove any Hazardous Material discovered on the Premises during the term of this Lease which is required to be removed by any governmental agency, including Port; which removal would not have been required except for Tenant's use of the Premises or Tenant's construction activities related to Tenant's alteration to the Premises. Notwithstanding the foregoing, Tenant shall not be obligated to remove any Hazardous Material introduced onto the Premises during the term of this Lease by the City, Port or their agents. Except as otherwise provided in this Paragraph 22, Tenant shall not be obligated to remove any Hazardous Material introduced onto the Premises prior to the Commencement Date. Prior to the termination of this Lease, Port and Tenant shall conduct a joint inspection of the Premises for the purpose of identifying Hazardous Material existing on the Premises, which Tenant is required to remove.

23. **Signs.**

Tenant agrees that no signs, advertisements, window displays, video displays or notices whatsoever shall be inscribed, painted or affixed or displayed on, to or in any part of the outside or inside of the premises without the written consent of Port. Any approved signs so placed on the premises shall be so placed upon the understanding and agreement that Tenant shall remove same at the termination of the tenancy herein created and repair any damage or injury to the premises caused thereby, and if not so removed by Tenant, then Port may have same removed at Tenant's expense.

**24. No Light, Air or View Easement.**
Any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Building shall in no way affect this Lease or impose any liability on Port.

**25. General Provisions.**

**a. Holding Over.**

(i) **With Consent**. Any holding over after the expiration of the Term of this Lease with the prior written consent of Port shall be deemed a month-to-month tenancy and shall be upon each and every one of the terms, conditions and covenants of this Lease, except that, at the Port's election, the rent shall be adjusted either in accordance with the provisions of Paragraphs 3(d) and 3(e) or to the then current market rate as reasonably determined by Port. Either party may cancel said month-to-month tenancy upon thirty (30) days written notice to the other party.

(ii) **Without Consent**. Any holding over after the expiration of the Term of this Lease without the prior written consent of Port shall be deemed a month-to-month tenancy and upon each and every one of the terms, conditions and covenants of this Lease, except that the rent shall be one hundred and fifty percent (150%) of the greater of (i) the rent, as adjusted under Paragraphs 3(d) and 3(e); or to the then current market rate as reasonably determined by Port, payable in the month immediately preceding the expiring the term of this Lease. Either party may cancel said month-to-month tenancy upon thirty (30) days written notice to the other party.

**b. Attorneys' Fees.**
In the event of any action or proceeding in law or equity between Port and Tenant to enforce any provision of this Lease or to protect or establish any right or remedy of either party to this Lease, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees and costs of suit and, if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorneys' fees shall be included in and as a part of such judgment. For purposes of this Lease, reasonable fees of attorneys of City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of professional experience who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of City Attorney.

**c. Successors.**
The terms, covenants, agreements and conditions set forth in this Lease shall, subject to the provisions of Paragraph 14 of this Lease related to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto.

**d. Notices.**
All notices, demands, consents or approvals which are or may be required to be given by either party to the other under this Lease shall be in writing and shall be deemed to have been fully given when delivered in person to such representatives of Port and Tenant as shall from time to time be designated by the parties for the receipt of notices, or when deposited in the United States mail, postage prepaid, and addressed, if to Port to:

**Commercial Property Manager**
**San Francisco Port Commission**
**Pier 1**
**San Francisco, CA 94111**

and if to Tenant to:

____________________________
____________________________
____________________________

**Telephone No:** (____) __________
**Fax No:** ( )

or to such other address with respect to either party as that party may from time to time designate by notice to the other given pursuant to the provisions of this Paragraph. Service of process at Tenant's address provided herein shall be valid and binding upon such party.

**Name/Address of Agent for Service of Process, if Tenant is a Corporation:**

**e. Time Is of Essence.**
Time is of the essence of this Lease.

**f. Captions.**
The captions in this Lease are for convenience only, are not a part of this Lease and do not in any way affect, limit or amplify the terms and provisions of this Lease.

**g. California Law.**
This Lease shall be construed and interpreted in accordance with the laws of the State of California.

**h. Entire Agreement.**
This Lease constitutes the entire agreement between the parties with respect to its subject matter. There are no other agreements, understandings, representations or warranties, either written or oral, with respect thereto. This Lease shall not be modified or amended except by a subsequent writing executed by the parties.

**i. Severability.**
Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect.

**j. Real Estate Broker's Fees.**
Each party shall be responsible for the payment of all fees and commissions to any real estate broker with whom such party has contracted. Each party shall hold the other party harmless from any and all damage resulting from any claim which may be asserted against the other party by any broker, finder, or other person with whom the other party has or purportedly has dealt with respect to this Lease.

**k. Authority.**
If Tenant signs as a corporation or a partnership, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon City's request, Tenant shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

**26. City Requirements**

**a. Non-Discrimination.**

(i) Covenant Not to Discriminate. In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Tenant, in any of Tenant's operations within the United States or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant.

(ii) Subleases and Other Subcontracts. Tenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all Subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all Subtenants and other subcontractors to comply such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this lease.

(iii) Non-Discrimination in Benefits. Tenant does not as of the date of this Lease and will not during the Term, in any of its operations within the United States, discriminate in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12.2(b) of the San Francisco Administrative Code.

(iv) Condition to Lease. As a condition to the effectiveness of this Lease, Tenant shall execute and deliver to Port the Nondiscrimination in contracts and Benefits form approved by the San Francisco Human Rights Commission.

(v) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of $50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

b. MacBride Principles-Northern Ireland.

City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

c. Tropical Hardwood and Virgin Redwood Ban.

City urges Tenant not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product.

d. Tobacco Products Advertising Ban.

Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the property, which is the subject of this Lease. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

e. Pesticide Prohibition.

Tenant shall comply with the provisions of Section 39.9 of Chapter 39 of the San Francisco Administrative Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Tenant to submit to Port an integrated pest management (IPM) plan that (A) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the Term of this Lease, (B) describes the steps Tenant will take to meet the City's IPM Policy described in section 39.1 of the Pesticide Ordinance and (C) identifies, by name, title,

address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. In addition, Tenant shall comply with the requirements of Sections 39.4(a) and 39.4(b) of the Pesticide Ordinance as of January 1, 1999 and January 1, 2000, respectively.
Through Port, Tenant may seek a determination from the City's Commission on the Environment that Tenant is exempt from complying with certain portions of the Pesticide Ordinance with respect to this Lease, as provided in Section 39.8 of the Pesticide Ordinance. Port shall reasonably cooperate with Tenant if Tenant seeks in good faith an exemption under the Pesticide Ordinance, provided that Port shall have no obligation to make expenditures or incur expenses other than administrative expenses.

### f. First Source Hiring.

The City has adopted a First Source Hiring Ordinance (San Francisco Administrative Code §83.1 et. seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions. Pursuant to §83.7(b) of the First Source Hiring Ordinance, the Port Commission has adopted a First Source Hiring Implementation and Monitoring Plan ("Port Plan") subject to approval by the First Source Hiring Administration. Tenant acknowledges receiving and reviewing the First Source Hiring Ordinance. Under Section 83.9(d) of the first Source Hiring Ordinance, compliance by an employer with the Port Plan is deemed to be compliance with the provisions of the First Source Hiring Ordinance.

Based on the foregoing Tenant agrees to comply with the Port Plan through compliance with all of the following measures:

Tenant shall notify the City and County of San Francisco's Workforce Development System, Department of Human Services of all projected Entry Level Positions and the approximate date such positions will be available, by using the Job Survey Form provided by the Port of San Francisco. The Port will also provide the Tenant with a detailed instruction sheet summarizing the procedure for the commencement of the lease. Tenant shall return the Job Survey Form to the Port within 30 days after execution of the lease by the Port and Tenant.

For purposes of this Agreement the terms "Entry Level Position", "San Francisco Workforce Development System", "Qualified Economically Disadvantaged Individual", and "First Source Hiring Agreement" shall have the meaning provided in Section 83.4 of the San Francisco Administrative Code.

Tenant shall notify the San Francisco Workforce Development System of all vacancies for existing or new Entry Level Positions on the Premises, during the lease term, and shall offer the San Francisco Workforce Development System the first opportunity to provide Qualified Economically Disadvantaged Individuals for employment in these positions.

Tenant shall not publicize or otherwise post such vacancies until the San Francisco Workforce. Development System refers Qualified Economically Disadvantaged Individuals for employment in these positions or notifies Tenant that no Qualified Economically Disadvantaged Individuals are available for the particular vacancies. The San Francisco Workforce Development System shall respond to Tenant within ten (10) business days. After 10 business days, if the San Francisco Workforce Development System does not refer applicants, Tenant can advertise and fill Entry Level Positions outside of the City referral system.

Tenant shall interview qualified applicants and use good faith in hiring applicants. Tenant shall maintain good records of recruitment and hiring process, and shall permit Port or City to audit such records upon request.

Pursuant to Section 83.10 of the Ordinance, if upon administrative review, it is determined that Entry Level positions were not made available to the San Francisco Workforce Development system for referral of Qualified Economically Disadvantaged Individuals, and the Employer does not remedy the violations, the Employer shall be assessed a penalty in the amount of $2,070 for every new hire for an Entry Level Position improperly withheld from the First Source Hiring process.

g. Requiring Health Benefits for Covered Employees.

Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q (Chapter 12Q), including the implementing regulations as the same may be amended or updated from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth herein. The text of the HCAO is currently available on the web at www.sfgov.org. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee Tenant shall provide the appropriate health benefit set forth in Section 12Q.3.

(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) Tenant understands and agrees that the failure to comply with the requirements of the HCAO shall constitute a material breach by Tenant of this Lease

(d) If, within 30 days after receiving written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(e) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify the Purchasing Department when it enters into such a Sublease or Contract and shall certify to the Purchasing Department that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO for each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that the Contracting Department has first provided Tenant with notice and an opportunity to cure the violation.

(f) Tenant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(g) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(h) Tenant shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(i) Upon request, Tenant shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subtenants, Contractors, and Subcontractors.

(j) Within five (5) business days of any request, Tenant shall provide the City with access to pertinent records relating to any Tenant's compliance with the HCAO. In addition, the City and its agents may conduct random audits of Tenant at any time during the term of this Lease. Tenant agrees to cooperate with City in connection with any such audit.

(k) If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the City or relating to City-owned property is less than $25,000 (or $50,000 for nonprofits) in that fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed $75,000 in that fiscal year, then all of the Contractor's or Subcontractor's contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed $75,000 in the fiscal year.

h. Green Building Ordinance.
City has adopted a Resource Efficient City Building Ordinance (S.F. Admin. Code §§ 82.1-82.7). That Ordinance requires new tenants under new leases of City-owned buildings to comply with certain resource-efficient standards for installation of low-flow toilets and shower heads, installation or replacement of energy efficient light fixtures and exit signs, design and implementation of indoor air quality maintenance plans, provision of adequate space for collection, storage and disposal of recyclable materials, and, for construction projects of $1,000,000 or more, design and implementation of measures to prevent moisture contamination in building materials and to require encapsulation of fibrous insulation materials, and implementation of measures to handle construction and demolition debris pursuant to a construction and demolition debris management plan. To the extent that said Ordinance applies to the Premises, and except to the extent waived or exempted by the Executive Director of the Port upon request by the Tenant, Tenant shall comply with the requirements of such Ordinance.

i. Notification of Limitations on Contributions.
San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 3.700 et. seq., and San Francisco Ethics Commission Regulations 3.710(a)-1—3.730-1, prohibit the public officials who approved this contract from receiving (a) gifts, honoraria, emoluments or pecuniary benefits of a value in excess of $50; (b) any employment for compensation; or (c) any campaign contributions for any elective office for a period of up to six years from individuals and entities who are "public benefit recipients" of the contract. Public benefit recipients of the contract are: (i) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the contract; (ii) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time the public benefit is awarded; or (iii) an individual who is a trustee, director, partner or officer of the contracting party at the time the public benefit is awarded.

Tenant understands that any public official who approved this contract may not accept campaign contributions, gifts, or future employment from Tenant except as provided under the Conduct Code. Tenant agrees to notify any other individuals or entities that may be deemed "public benefit recipients" under the Conduct Code because of this contract. Upon request, Tenant agrees to furnish, before this contract is entered into, such information as any public official approving this contract may require in order to ensure such official's compliance with the Conduct Code. Upon request, the City agrees to provide, before this contract is entered into, Tenant with a list of public official who, under the Conduct Code, approved this contract. Failure of any public official who approved this contract to abide by the Conduct Code shall not constitute a breach by either the City or Tenant of this contract. Notwithstanding anything to the contrary in this contract, neither party shall have the right to terminate the contract due to any failure by the other party to provide the information described in this paragraph.

## 27. Termination by Port.
Tenant's period of occupancy of the Premises is subject to Port's right to terminate this Lease as provided herein when the Premises is needed in connection with a Port program or project. As used herein, "Port program or project" shall mean any development or renovation, by public and/or private parties, of the building, pier or seawall lot in or on which the Premises is located. In the event of any such development or renovation, Port shall have the right to terminate this Lease without liability or expense upon delivery to Tenant of thirty (30) days prior written notice of such termination. Tenant agrees and shall be required to surrender possession of the Premises by the end of such thirty (30) day period.

## 28. Waiver of Relocation.
Tenant hereby waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §7260 et seq., and the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §4601 et seq. or under any similar law, statute or ordinance now or hereafter in effect (collectively, "Uniform Relocation Laws").

## 29. Asbestos Notification.
Tenant acknowledges and agrees that it has been informed that the materials used to construct the Building, including the Premises, contain asbestos. Tenant agrees that its waiver of claims set forth in

Paragraph 13 hereof is given with full knowledge of the presence of asbestos in the Building and Premises and the potential consequences of such fact. Tenant is aware that the presence of asbestos in the Premises may limit Tenant's ability to construct alterations or improvements to the Premises without Tenant first performing abatement of such asbestos. The presence of asbestos in the Premises or the Building and the removal by Port of all or a portion of the asbestos in the Building, whether in the Premises or elsewhere in the Building, shall not, however, (i) entitle Tenant to any claim for damages, (ii) relieve Tenant of any of its obligations hereunder, including without limitation the obligation to pay rent, (iii) constitute or be construed as a constructive or other eviction of Tenant, or (iv) constitute or be construed as a breach of Port's covenant assuring Tenant's quiet enjoyment of the Premises.

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IN WITNESS WHEREOF, Port and Tenant have executed this Lease at San Francisco, California, on the last date set forth below.

**PORT:**
CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION

By______________________________
Kenneth E. Winters
Director of Real Estate

Dated:____________________________

**TENANT:**

| | |
|---|---|
| By________________________ | By______________________________ |
| Its________________________ | Title:____________________________ |
| Dated______________________ | Dated____________________________ |

**APPROVED AS TO FORM:**
DENNIS J. HERRERA, City Attorney

By______________________________
Deputy City Attorney

Lease Prepared By , Property Manager, Leasing ______________(Initial)

\\PACIFICA\USERS\TENANT\Forms for Real Estate Div. - 2000\Boiler Plate - Roundhouse lease.\6/02doc

# EXHIBIT B

# ROUNDHOUSE PLAZA

# RULES AND REGULATIONS

1. The sidewalk, halls, passages, exits, entrances, malls, elevators and stairways of the Roundhouse Plaza (Plaza) shall not be obstructed by any of the Tenants or used by them for any purposes other than for ingress to and egress from their respective Premises. The halls, passages, exits, entrances, malls, elevators and stairways are not for the general public, and Port shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of Port would be prejudicial to the safety, character, reputation and interests of the Plaza and its Tenants providing that nothing herein contained shall be construed to prevent such access to persons with whom any Tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. No Tenant and no employee or invitee of any Tenant shall go upon the roofs of the Plaza.

2. No sign, placard, picture, name, advertisement or notice visible from the exterior of any Tenant's premises shall be inscribed, painted, affixed or otherwise displayed by any Tenant on any part of the Plaza without the prior written consent of Port. Port may adopt and make available to Tenant general guidelines relating to signs inside the Plaza buildings on the office floors. Tenant agrees to conform to such guidelines, but may request approval of Port for modification, which approval will be entirely at Port's discretion. All approved signs or lettering on doors shall be printed, painted, affixed or inscribed at the expense of the Tenant by a person approved by Port, which approval will not be unreasonably withheld. Material visible from outside the buildings will not be permitted.

3. The Premises shall not be used for lodging. No cooking shall be done or permitted by any office tenant on the Premises, except that use of Underwriters' Laboratory approved equipment for brewing coffee, tea, hot chocolate and similar beverages shall be permitted, provided that such use is in accordance with all applicable federal, state and city laws, codes, ordinances, rules and regulations.

4. No Tenant shall employ any person or persons other than the janitor of Port for the purpose of cleaning the Premises, unless otherwise agreed to by Port in writing. Except with the written consent of Port, no person or persons other than those approved by Port shall be permitted to enter the Plaza buildings for the purpose of cleaning the same. No Tenant shall cause any unnecessary cleaning by reason of such Tenant's carelessness or indifference in the preservation of good order and cleanliness. Janitorial services will not be fumished on nights when rooms are occupied after 9:30 p.m. unless, by agreement in writing, service is extended to a later hour for specifically designated rooms.

5. Port will furnish each Tenant, free of charge, with two keys to each door lock in the Premises. Port may make a reasonable charge for any additional keys. No tenant shall alter any lock or install a new or additional lock or any bolt on any door of its Premises without the prior written consent of Port. Tenant shall, in each case, fumish Port with a key for any such lock. Each Tenant, upon the termination of its tenancy, shall deliver to Port all keys to doors in the Plaza which have been furnished to Tenant.

6. Port shall have the right to prescribe the weight, size and position of all equipment, materials, furniture or other property brought into the Plaza. A designated freight elevator shall be available for use by all Tenants in Two Roundhouse Plaza, subject to such reasonable scheduling as Port, in its discretion, shall deem appropriate. The persons employed to move such equipment in or out of the Plaza buildings must be acceptable to Port. Heavy items shall, if considered necessary by Port, stand on wood strips of such thickness as is necessary to properly distribute the weight. Port will not be responsible for loss of, or damage to, any such property from any cause, and all damage done to the Plaza by moving or maintaining such property shall be repaired at the expense of Tenant.

7. No Tenant shall use or keep in the Premises or the Plaza any kerosene, gasoline or flammable or combustible fluid or material, other than limited quantities thereof, reasonably necessary for the operation or

maintenance of office equipment, or, without Port's prior written approval, use any method of heating or air conditioning other than that supplied by Port. No Tenant shall use or keep, or permit to be used or kept, any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Port or other occupants of the Plaza by reason of noise, odors or vibrations, or interfere in any way with other Tenants or those having business therein.

8. Port shall have the right, exercisable with reasonable notice and without liability to any Tenant, to change the name and street address of the Plaza buildings.

9. The directories of the Plaza will be provided for the display of the name and location of Tenants and a reasonable number of principal officers and employees or Tenants, and Port reserves the right to exclude any other names therefrom. Any additional name, which Tenant shall desire to place upon said directories must first be approved by Port, and, if so approved, a charge will be made therefor.

10. No curtains, draperies, blinds, shutters, shades, screens or other coverings, hangings or decorations shall be attached to, hung or placed in, or used in connection with any of the Plaza buildings without the prior written consent of Port. In any event, with the prior written consent of Port, such item shall be installed on the office side of Port 's standard window covering and shall in no way be visible from the exterior of the buildings.

11. All deliveries of ice, drinking water, food, beverage, towel or other similar services shall be at such reasonable hours and under such reasonable regulations as may be fixed by Port.

12. Each Tenant shall see that the doors to its Premises are closed and locked and that all water faucets, water apparatus and utilities are shut off before Tenant or Tenant's employees leave the Premises, so as to prevent waste or damage, and for any default or carelessness in this regard Tenant shall make good all injuries sustained by Port or other tenants or occupants of the Plaza. On multiple tenancy floors, all Tenants shall keep the doors to the Plaza building corridors closed at all times except for ingress and egress.

13. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed. No foreign substance of any kind whatsoever shall be thrown therein and the expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the Tenant who, or whose employees or invitees, shall have caused it.

14. Except with the prior written consent of Port, no Tenant shall sell, or permit the sale at retail, of newspapers, magazines. periodicals, theater tickets or any other goods or merchandise to the general public in or on the Premises, nor shall any Tenant carry on, or permit or allow any employee or other person to carry on; the business of stenography, typewriting or any similar business, in or from the Premises, for the service or accommodation of occupants of any other portion of the Plaza, nor shall the Premises of any Tenant be used for manufacturing of any kind or any business or activity other than that specifically provided for in such Tenant's leased.

15. No tenant shall install any antenna, loudspeaker or other device on the roof or exterior walls of the Plaza buildings.

16. There shall not be used in any tenant space or in the public areas of the Plaza, either by any Tenant or others, any hand trucks except those equipped with rubber tires and side guards or such other material handling equipment as Port may approve. No other vehicles of any kind shall be brought by any Tenant into the Plaza buildings or kept in or about its Premises.

17. Each Tenant shall store all ice, trash and garbage within its Premises. No material shall be placed in the trash boxes or receptacles if such material is of such nature that it may not be disposed of, in the ordinary and customary manner of removing and disposing of trash and garbage in the City of San Francisco, without being in violation of any law or ordinance governing such disposal. All garbage and refuse removal shall be made only through entry ways and elevators provided for such purpose, and at such times as Port shall designate.

18. Canvassing, peddling, soliciting, and distribution of handbills or any other written material in the Plaza

without the consent of Port are prohibited, and each Tenant shall cooperate to prevent the same.

19. The requirements of the Tenants will be attended to only upon application by telephone or in person at the office of the Plaza. Employees of Port shall not perform any work or do anything outside of their regular duties unless under special instructions from Port.

20. Port may waive any one or more of these Rules and Regulation for the benefit of any particular Tenant or Tenants, but no such waiver by Port shall be construed a waiver of such Rules and Regulations in favor of any other Tenant or Tenants, nor prevent Port from thereafter enforcing any such Rules and Regulations against any or all of the Tenants of the Plaza.

21. These Rules and Regulations are in addition to, and shall not be construed in any way modify or amend, in whole or in part, the terms, covenants, agreements and condition of any lease of premises in the Plaza.

22. Port reserves the right to make such other and reasonable rules and regulations as in its judgment may, from time to time, be needed for the safety, care and cleanliness of the Plaza and for the preservation of good order therein.

Initials: Port ________________ Tenant ________________

# APPENDIX F

## City Requirements

# CHAPTER 4
# CITY BUILDINGS, EQUIPMENT, AND VEHICLES

ec. 4.1. Public Buildings and Grounds; Administration and Protection.
ec. 4.1-2. City Hall Short Term License, Filming, and Tour Fees; Listed Caterers.
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ec. 4.3. Installation of Vending Stands and Machines - City Hall.
ec. 4.4. Installation of Vending Stands and Machines - Exceptions.
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ec. 4.6. Installation of Vending Stands and Machines - Application of Federal and State Laws; Maintenance in Sanitary Condition.
Sec. 4.7. Installation of Vending Stands and Machines - Insurance Against Claims for Damages.
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c. 4.10. Use of City Seal on City-Owned Passenger Automobiles; Color.
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Sec. 4.12. Automobile Pool.
Sec. 4.13. Automobile Self-Insurance.
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Sec. 4.18. Lenders of Personal Property to the City for Use on a Trial Basis Required to Save Harmless the City, Officers and Employees for Loss or Injury to Property - Approval of Purchaser of Supplies.
Sec. 4.19. Use of City Property.
Sec. 4.20. Tobacco Product Advertising Prohibition.
Sec. 4.21. Naming the Civic Auditorium for Bill Graham.
Sec. 4.22. Naming the Hall of Justice for Thomas J. Cahill.
Sec. 4.23. Rental Deposits; Bill Graham Civic Auditorium and Moscone Center Convention Center.

## SEC. 4.20. TOBACCO PRODUCT ADVERTISING PROHIBITION.

No advertising of cigarettes or tobacco products shall be allowed on any property owned by or under the control of the City and County of San Francisco. This prohibition shall include the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition shall not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking. All leases, permits or agreements awarded by the City and County of San Francisco allowing any person to use City property shall specifically provide that there shall be no advertising of cigarettes or tobacco products. This prohibition shall apply to all existing leases, permits or agreements except where its application would impair obligations of contract. (Added by Ord. 186-92, App. 6/22/92)

# CHAPTER 39

# AN FRANCISCO INTEGRATED PEST MANAGEMENT PROGRAM

c. 39.1. Purpose and Findings.
ec. 39.2. Definitions.
ec. 39.3. Ban on Use of Toxicity Category I and Certain Other Pesticides.
ec. 39.4. Ban on Use of Toxicity Category II Pesticide Products; Total Pesticide Ban.
ec. 39.5. Notice of Pesticide Use.
ec. 39.6. Implementation of City Integrated Pest Management Policy.
ec. 39.7. Recordkeeping and Reporting.
ec. 39.8. Exemptions.
Sec. 39.9. City Contracts.
Sec. 39.10. Guidelines.

## SEC. 39.1. PURPOSE AND FINDINGS.

(a) The Board of Supervisors hereby finds and declares that it shall be the policy of the City and County of San Francisco for City departments and City contractors who apply pesticides to City property to eliminate or reduce pesticide applications on City property to the maximum extent feasible.

(b) Under this Chapter, the City and County of San Francisco wishes to exercise its power to make economic decisions involving its own funds as a participant in the marketplace and to conduct its own business as a municipal corporation to ensure that purchases and expenditures of public monies are made in a manner consistent with integrated pest management policies and practices.

(c) This Chapter 39 concerns the application of pesticides to property owned by the City and County of San Francisco only, and does not concern the application of pesticides to property that is not owned by the City and County of San Francisco.

(d) City departments shall implement the following City Integrated Pest Management (IPM) Policy:

### CITY INTEGRATED PEST MANAGEMENT POLICY

The City, in carrying out its operations, shall assume pesticides are potentially hazardous to human and environmental health. City departments shall give preference to reasonably available nonpesticide alternatives when considering the use of pesticides on City property. For all pest problems on City property, City departments shall follow the integrated pest management (IPM) approach outlined below.

(1) Monitor each pest ecosystem to determine pest population, size, occurrence, and natural enemy population, if present. Identify decisions and practices that could affect pest populations. Keep records of such monitoring;

(2) Set for each pest at each site and identify in an IPM implementation plan, an injury level, based on how much biological, aesthetic or economic damage the site can tolerate;

(3) Consider a range of potential treatments for the pest problem. Employ nonpesticide management tactics first. Consider the use of chemicals only as a last resort and select and use chemicals only within an IPM program and in accordance with the provisions of Chapter 39.

(A) Determine the most effective treatment time, based on pest biology and other variables, such as weather, seasonal changes in wildlife use and local conditions,

(B) Design and construct indoor and outdoor areas to reduce and eliminate pest habitats,

(C) Modify management practices, including watering, mulching, waste management, and food storage,

(D) Modify pest ecosystems to reduce food and living space,

(E) Use physical controls such as hand-weeding, traps and barriers,

(F) Use biological controls (introducing or enhancing pests' natural enemies);

(4) Conduct ongoing educational programs:

(A) Acquaint staff with pest biologies, the IPM approach, new pest management strategies as they become known, and toxicology of pesticides proposed for use,

(B) Inform the public of the City's attempt to reduce pesticide use and respond to questions from the public about the City's pest management practices;

(5) Monitor treatment to evaluate effectiveness. Keep monitoring records and include them in the IPM implementation plan.

(e) Nothing in this Chapter is intended to apply to pesticide applications that are required to comply with federal, State or local laws or regulations. (Added by Ord. 401-96, App. 10/21/96; amended Ord. 274-97, App. 7/3/97)

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# CHAPTER 83
# FIRST SOURCE HIRING PROGRAM

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## SEC. 83.1. SHORT TITLE.

This Chapter shall be known as the "First Source Hiring Program." (Added by Ord. 8/21/98)

## SEC. 83.2. FINDINGS.

(a) In August 1996, a new federal law, the Personal Responsibility and Work Opp known as "welfare reform," fundamentally changed the nature of public assistance prog country, shifting the focus from the receipt of benefits to procurement of employment v limits. Approximately 17,350 of San Francisco's children and 7,330 of its adults (3.4 pe population) who currently receive Temporary Assistance to Needy Families (TAIF), th known as Aid to Families with Dependent Children (AFDC), will be limited to five cun during their lifetime. This means that within five years, the adult members of these fam specifically exempted, must be employed at an economically self-sufficient level. Unde law, after two years on aid, most recipients must work in order to maintain eligibility fo reach their time limits, there will be no federal or State funding help to support them. Tl creation and retention of adequate employment opportunities within the City is essentia families from falling into complete destitution.

(b) The federal law will penalize states that fail to meet their assigned quotas for r from welfare to work by imposing monetary sanctions that will be passed on to the cou that failure by the City to meet its work-force participation goals would cost $2.33 milli and $3.27 million the second year.

(c) Many people on welfare and other economically disadvantaged individuals do immediate access to employment opportunities that will bring economic self-sufficienc recipients of public benefits are confronted with multiple barriers to full employment, i education, job-readiness skills and work experience.

(d) Between 1990 and 1993, San Francisco lost over 37,500 jobs, including score blue collar positions, particularly in manufacturing.

(e) The welfare time limits imposed upon families place tremendous pressure on t provide appropriate training opportunities, and assist economically disadvantaged indiv retain adequate employment. The availability of sufficient employment opportunities is economic and social well-being of the City. This process of workforce development mu of the City's economic development planning.

(f) New development and construction of commercial projects tend to increase pr in turn can displace low-income residents and put a greater burden on the City to assist disadvantaged individuals.

(g) Additionally, business expansion places increased demand upon, and reduces of qualified workers. The City's economic health depends upon the maintenance of that funds are a component of welfare reform and will result in an increase of available qual Thus, early identification of entry level positions in new or growing commercial activit plan training programs that will prepare economically disadvantaged individuals to be a new jobs. One of the goals of this Chapter is to create a seamless job referral system.

(h) The City, the business community, the service providers, organized labor, the people who must personally meet the challenge of welfare reform are gathering at a uni moment. The time limits on public assistance are a matter of law, and the only choice is opportunities so as not to bypass these workers. The consequences of welfare reform ar just for the individuals who must find economic self-sufficiency, but for the whole ecor and commercial activity of the City and its constituents.

(i) The concept of "First Source Hiring" under this Chapter contains two essentia identification of entry level positions in order to properly allocate training resources, an the first opportunity for graduates of those training programs to be considered for empl must work with the business community, the service providers, organized labor and sch workforce needs, developing job readiness standards, supporting training that creates a qualified workers, and providing a mechanism by which the business community can d thereby facilitating and strengthening the relationship between the City, community-ba development and place-mended programs, and the private sector. While the City comm support services necessary to ensure the successful transition to economic self-sufficien community must be willing to offer these employment opportunities to qualified econo disadvantaged individuals.

(j) Participation in the City's First Source Hiring Program can be economically ad
employers. The Program is expected to provide a ready supply of qualified workers to e
hiring needs. There are a variety of City, federal and State tax credits available for hirin
economically disadvantaged individuals. The City offers a New Jobs Hiring Tax Credit
create new, permanent jobs, or relocates existing jobs to the City, of 100 percent agains
tax for the first year, and 50 percent for the second. Businesses that create summer jobs
disadvantaged youth are eligible for a 50 percent credit against the City's payroll tax. W
designated "Enterprise Zone" areas of San Francisco, businesses that create new jobs fc
individuals are eligible for a gradually declining payroll tax credit, beginning at 100% f
years, and available for a total of 10 years. The State of California also allows a hiring t
wages paid qualified economically disadvantaged individuals, and a sales tax credit for
purchased in designated Enterprise Zones.

(k) In order to provide financial assistance to employers who hire qualified econo
disadvantaged individuals, the federal government offers the Federal Welfare-to-Work
Work Opportunity Tax Credit.

(l) The City is committed, in partnership with the Private Industry Council, to faci
access to tax credit and other financial incentive information regarding the hiring of qu
disadvantaged individuals who meet City, State or federal program criteria. (Added by
8/21/98)

## SEC. 83.3. PURPOSE.

The purpose of this Chapter is to establish a First Source Hiring Program for the Cit
San Francisco to foster construction and permanent employment opportunities for quali
disadvantaged individuals. Participation in this program shall be required in City contra
property contracts.

This Chapter additionally requires similar first source hiring obligations to be includ
authorizing construction of certain commercial development projects.

Because of the wide variety of contracts, and property contracts entered into, and pe
City, there is no single first source hiring requirement that can be applied and enforced
and permit situations. Therefore, specific first source hiring requirements must be tailor
contracts, property contracts, and permits for commercial activities. An administrative
established by the City to assist in the tailoring of these requirements, and shall be know
Source Hiring Administration (FSHA)" for the purpose of implementing and overseein
hiring requirements under this Chapter.

This Chapter is intended to authorize and direct the First Source Hiring Administrati
consistent with the purpose of this Chapter and its assessment of feasibility, and in a m
conflicts with applicable federal and State law, to set entry level position hiring and rete
contracts, property contracts and permits.

Nothing in this Chapter is intended to, nor shall it be interpreted or applied so to cre
impose a monetary exaction upon, developers under permits subject to the requirement
hiring.

Three years after the effective date of this Chapter, the Board of Supervisors shall re
Source Hiring Program to determine: (1) the number of entry level positions identified
qualified economically disadvantaged individuals; (2) whether participants in the Work
System received appropriate and sufficient training; (3) whether the requirements of thi

adequate to achieve the goals of the program; and (4) whether amendments and/or revis are needed. (Added by Ord. 264-98, App. 8/21/98)

## SEC. 83.4. DEFINITIONS.

(a) "Approved plan" shall mean a first source hiring implementation and monitori by a City department and approved by the FSHA. Once a department's overall plan has the FSHA, the department is not required to seek authorization from the FSHA for indi property contracts or permits unless otherwise instructed to do so in the approved plan.

(b) "City" shall mean the City and County of San Francisco.

(c) "Commercial activity" shall include retail sales and services, restaurant, hotel, other commercial uses.

(d) "Contract" shall mean an agreement for public works or improvements to be p goods or services to be purchased, or grants to be provided; at the expense of the City, moneys deposited in the Treasury of the City, or out of trust moneys under the control the City involving an expenditure in excess of $350,000 for construction contracts, and $200,000 for services. Contract shall also mean loans or grants in excess of $200,000 w by the Mayor's Office of Housing, the Mayor's Office of Community Development, the Children, Youth and their Families, or by any other City department.

The requirements of this Chapter shall apply to: (1) entry level positions for work pe contract in the City; (2) entry level positions for work performed on the contract in cou the City; and (3) entry level positions for work performed on the contract on property o

For purposes of this Chapter, "contract" shall include subcontracts under the contrac source hiring, unless otherwise exempted under this Chapter.

For purposes of this Chapter, "contract" shall not include contracts for urgent litigati determined by the City Attorney, emergency contracts under San Francisco Administra 6.30, or Section 21.25, sole source contracts, tolling agreements, cooperative purchasin other governmental entities or contracts with other governmental entities.

(e) "Contractor" shall mean any person(s), firm, partnership, corporation, or comb who enters into a contract or property contract with a department head or officer empov enter into contracts or property contracts on the part of the City.

(f) "Developer" shall mean the property owner, agents of the property owner, incl limited to management companies, person or persons, firm, partnership, corporation, or thereof, having the right under the San Francisco Planning Code and/or the San Francis make an application for approval of a commercial activity.

(g) "Development project" shall mean commercial activity(ies) that requires a Per to the requirements of this Chapter.

(h) "Economically disadvantaged individual" shall mean an individual who is eith services under the Job Training Partnership Act, 29 U.S.C. Section 1503, as determined Francisco Private Industry Council; or (2) designated "economically disadvantaged" by Hiring Administration, as an individual who is at risk of relying upon, or returning to, p

(i) "Employer" shall mean a contractor, sub-contractor, developer, agents of the d other occupants, or person(s), firm, partnership, corporation, or combination thereof en commercial activity(ies) in the development project, who is subject to the requirements

(j) "Entry level position" shall mean a non-managerial position that requires eithe above a high school diploma or certified equivalency; or (2) less than two years of train preparation; and shall include temporary and permanent jobs, and construction jobs rela development of a commercial activity.

(k) "First source hiring agreement" shall mean the written agreement entered into with the City which details the particular first source hiring requirements with which an comply, as further defined in Sections 83.9 and 83.11 of this Chapter.

(l) "FSHA" shall mean the First Source Hiring Administration.

(m) "Permit" shall mean, during Phase I, as defined in Section 83.4(n) below, eith following: (1) any building permit application for a commercial activity over 50,000 sq area and involving new construction, an addition, or alteration which results in the expa positions for a commercial activity; (2) any application which requires discretionary ac Planning Commission relating to a commercial activity over 50,000 square feet includi to, a conditional use, project authorization under San Francisco Planning Code Section development under San Francisco Planning Code Section 320, et seq.

During Phase II, as defined Section 83.4(o) below, either or both of the following: ( permit application for a commercial activity over 25,000 square feet in floor area and in construction, an addition, or alteration which results in the expansion of entry level posi commercial activity; (2) any application which requires discretionary action by the City Commission relating to a commercial activity over 25,000 square feet including, but no conditional use, project authorization under San Francisco Planning Code Section 309, development under San Francisco Planning Code Section 320, et seq.

The requirements of this Chapter shall apply to entry level positions for work done u authorizing a development project in the City.

(n) "Phase I" shall refer to the first stage of implementation of this Article which operative 30 days after the ordinance adopting this Chapter becomes effective, and shal for public works or improvements to be performed, property contracts, grants or loans i Mayor's Office of Housing, or by the Mayor's Office of Community Development, and commercial activity over 50,000 square feet.

(o) "Phase II" shall refer to the second stage of implementation of this Chapter w operative 24 months after the adoption of a resolution by the FSHA that Phase I has be and shall apply to contracts for services in the amount of $200,000, contracts for the pr materials, equipment or supplies as determined by the Purchaser under Section 83.7(d) permits issued for commercial activity exceeding 25,000 square feet; and grants and loa $200,000 issued by other City departments.

(p) "Property contract" shall mean a written agreement, including leases, concessi easements, between the City and a private party for the exclusive use of real property, o by the City, for a term exceeding 29 days in any calendar year (whether by a singular in cumulative instruments) for the operation or use of such real property for the operation establishment, that creates available entry level positions. For purposes of this Chapter, does not include an agreement for the City to use or occupy real property owned by oth

easements or permits entered into by the Public Utilities Commission for pipeline right
and watershed property.

(q) "Publicize" shall mean to advertise or post, and shall include participation in j
forums in which employment information is available.

(r) "Qualified" with reference to an economically disadvantaged individual shall
who meets the minimum bona fide occupational qualifications provided by the prospec
San Francisco Workforce Development System in the job availability notices required

(s) "Retention" shall, when used in this Chapter, be construed to apply to the entr
to any particular individual.

(t) "San Francisco Workforce Development System (System)" shall mean the sys
the City and County of San Francisco, and managed by the FSHA, for maintaining: (1)
individuals; and (2) the mechanism by which such individuals are certified and referred
employers covered by the first source hiring requirements under this Chapter. (Added b
App. 8/21/98)

## SEC. 83.5. SCOPE.

The requirements of this Chapter shall apply to: (a) entry level positions for work pe
contract in the City; (b) entry level positions for work performed on the contract in cou
the City; (c) entry level positions for work performed on the contract on property owne
(d) entry level positions for work done under a permit authorization on a development
(Added by Ord. 264-98, App. 8/21/98)

## SEC. 83.6. FIRST SOURCE HIRING ADMINISTRATION.

(a) **Establishment and Composition.** A First Source Hiring Administration ("FS
established for the purpose set forth in Subsection (b) below. The FSHA shall consist o
the Mayor or his/her designee from the Mayor's Office of Economic Development; (2)
Director of the Department of Human Services, or his/her designee; (3) the Director of
of Community Development, or his/her designee; (4) the President of the Private Indus
his/her designee; (5) other City department representatives appointed by the FSHA as n
to time; and (6) other San Francisco governmental agency representatives participating
Hiring Program and invited by the FSHA.

(b) **Powers and Duties.** The FSHA shall be responsible for the implementation, o
monitoring of the first source hiring requirements of this Chapter. Its powers and duties

(1) Providing assistance to individual City departments in designing first source h
implementation and monitoring plans for that department to use in contracts and proper
including criteria for assigning particular numerical hiring goals, or reviewing and appr
Plans. The FSHA shall work with departments to identify those contracts and property
available entry level positions in duration and numbers sufficient to justify the addition
duties resulting from the implementation of the requirements of this Chapter. To the gre
possible, the development of these plans shall utilize the department's existing contract-
procedures and facilitate a coordinated flow of information;

(2) Working with the Department of City Planning and the Department of Buildi
establish conditions based upon first source hiring agreements for development projects

department shall submit that information as its plan. Compliance with such regulations be an "approved plan." Compliance by a department with the approved plan shall be de compliance with the requirements of this Chapter. The FSHA may require regular repo department as part of the plan.

(c) In situations where both the Departments of Building inspection and Planning development project, the City's Department of Planning shall have primary jurisdiction imposed on the permit required under this Chapter, and the role of the Department of B shall be limited to assisting in enforcement of the first source hiring requirements.

(d) The Purchaser shall determine which contracts for the procurement of goods, equipment or supplies to which it is feasible to apply the first source hiring requirement and, in consultation with the FSHA, shall develop first source hiring criteria for inclusi bid and requests for proposals. The successful bidder or respondent shall enter into a fir agreement. (Added by Ord. 264-98, App. 8/21/98)

## SEC. 83.8. WORKFORCE DEVELOPMENT ADVISORY COMMITTEE.

There shall be established a Workforce Develop-mended Advisory Committee ("Ad to advise the FSHA on workforce development, employ-mended needs, program policy implementation, oversight, and monitoring. This advisory committee shall be appointed shall include representatives of community-based organizations, labor, the business con departments. The members of this advisory committee shall serve at will for a term of c be reappointed. This advisory committee shall meet at least quarterly. (Added by Ord. 8/21/98)

## SEC. 83.9. FIRST SOURCE HIRING REQUIREMENTS FOR CONTRACTS A CONTRACTS.

(a) This Chapter applies to all contracts and property contracts, except where the that application of the requirements of this Chapter is not feasible or conflicts with appl State law.

(b) As an essential term of, and consideration for, any contract or property contrac exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ( the City, on or before the effective date of the contract or property contract. Such agree

(1) Set appropriate hiring and retention goals for entry level positions. The emplo achieve these hiring and retention goals, or, if unable to achieve these goals, to establis as to its attempts to do so, as set forth in the agreement. The agreement shall take into c employer's participation in existing job training, referral and/or brokerage programs. W of the FSHA, subject to appropriate modifications, participation in such programs may meeting the requirements of this Chapter. Failure either to achieve the specified goal, o faith efforts will constitute noncompliance and will subject the employer to the provisic of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will Francisco Workforce Development System with the first opportunity to provide qualifi disadvantaged individuals for consideration for employment for entry level positions. E consider all applications of qualified economically disadvantaged individuals referred b employment; provided however, if the employer utilizes nondiscriminatory screening c shall have the sole discretion to interview and/or hire individuals referred or certified b Workforce Development System as being qualified economically disadvantaged indivi

(3) Working with employers and unions to identify entry level positions for qualif disadvantaged individuals, and to set appropriate recruitment, hiring and retention goal

(4) Managing the San Francisco Workforce Development System;

(5) Determining appropriate monitoring and enforcement mechanisms to achieve Chapter, and consistent with Sections 83.10 and 83.12, below;

(6) Developing written regulations to implement first source hiring;

(7) Entering into cooperative agreements with other San Francisco governmental but not limited to, the Housing Authority, the Redevelopment Agency, the In-Home Su Public Authority, and the Parking Authority, consistent with the laws governing such a consistent with the purpose of this Chapter;

(8) Conducting independent audits of City departmental implementation, monitori enforcement of the requirements of this Chapter;

(9) Preparing an annual report on the progress of first source hiring for presentati the Board of Supervisors;

(10) Submitting all approved first source hiring implementation and monitoring pl plan") to the Workforce Development Advisory Committee for review;

(11) Developing effective outreach, education, support services for, and recogniti

(c) The FSHA shall phase-in implementation of this Chapter in accordance with S below, and as defined in Sections 83.4 (n) and (o), above. The FSHA shall first establis assisting in the development of, or approving existing first source hiring implementatio plans by the following City departments: Airport; Department of Building Inspection; Planning; Department of Public Health; Mayor's Office of Children, Youth and Familie of Community Development; Mayor's Office of Housing; Municipal Railway; Parks an Public Works, and Purchasing. The FSHA shall also establish a schedule for the remain departments.

(d) The FSHA shall exercise its powers and duties in a manner that does not resul impose a monetary exaction under permits, subject to this Chapter.

(e) The FSHA shall make the final administrative determination as to compliance requirements of this Chapter. (Added by Ord. 264-98, App. 8/21/98)

## SEC. 83.7. DUTIES OF CITY DEPARTMENTS.

(a) All commissions, departments, officers and employees of the City shall coope in connection with their respective duties relative to the award of contracts, property co issuance of permits subject to this Chapter.

(b) City departments shall develop an overall first source hiring implementation a ("plan") with the assistance of the FSHA. Once the FSHA approves the plan ("approve department is not required to seek approval from the FSHA for specific contracts, prop permits unless otherwise instructed to do so in the approved plan. If a department is re with federal or state hiring program regulations that meet or exceed the requirements o

## SEC. 83.10. VIOLATION OF FIRST SOURCE HIRING IN CONTRACTS AND CONTRACTS.

(a) Violation of the requirements of this Chapter is subject to an assessment of liq
set forth below. Additionally, contractors, except property contractors, may be subject t
Sections 6.52, 6.58, and/or 6.60 of the San Francisco Administrative Code.

(b) If upon administrative review as provided for in Subsection (e) of this Section.
determines that entry level positions were not made available to the System for referral
economically disadvantaged individuals as specified in the employer's first source hirin
the employer does not remedy the violations, that employer shall be assessed liquidated
amount of $2,070 for every new hire for an entry level position improperly withheld frc
hiring process.

(c) Lack of referrals of qualified economically disadvantaged individuals, delay ir
causes beyond the reasonable control of the employer, emergency, or other good cause
the employer to the FSHA may be a defense to the assessment of liquidated damages ui

(d) If the developer fulfills its obligations as set forth in this Chapter, the develope
responsible for the failure of an employer to comply with the requirements of this Chap

(e) The assessment of liquidated damages and the evaluation of any defenses or m
shall be made by the FSHA.

(f) The FSHA shall establish procedures that allow an employer to respond to any
noncompliance made by a City department or other interested party, or any determinati
noncompliance with this Chapter made by the FSHA, prior to the imposition of any san
(Added by Ord. 264-98, App. 8/21/98)

## SEC. 83.11. FIRST SOURCE HIRING REQUIREMENTS FOR PERMITS FOR DEVELOPMENT.

(a) Developers applying for permits as defined in Section 83.4(m) shall cooperate
establishing first source hiring agreement(s) for the development project. Such agreeme
condition of the permit, and shall:

(1) Set appropriate hiring and retention goals for entry level positions for all empl
construction work on, and commercial activity(ies) to be conducted in, the developmen
developer shall agree to require all such employers to achieve these hiring and retention
to achieve these goals, to establish good faith efforts as to their attempts to do so, as set
agreement. The agreement shall take into consideration the employer's participation in
training, referral and/or brokerage programs. Within the discretion of the FSHA, subjec
modifications, participation in such programs may be certified as meeting the requirem
Failure either to achieve the specified goal, or to establish good faith efforts will constit
and will subject the employer to the sanctions provided in Section 83.12 of this Chapte

(2) Set first source interviewing, recruitment and hiring requirements for all empl
construction work on, and commercial activity(ies) to be conducted in, the developmen
provide the San Francisco Workforce Development System with the first opportunity tc
economically disadvantaged individuals for consideration for employment for entry lev
Employers subject to the agreement shall consider all applications of qualified economi

of the first source interviewing requirement shall be set forth in each agreement, but sh
days. During that period, the employer may publicize the entry level positions in accord
agreement. A need for urgent or temporary hires must be evaluated, and appropriate pr
situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level
San Francisco Workforce Development System so that the System may train and refer
qualified economically disadvantaged individuals to participating employers. Notificati
such information as employment needs by occupational title, skills, and/or experience
required, wage scale and duration of employment, identification of entry level and train
identification of English language proficiency requirements, or absence thereof, and the
and procedures for hiring for each occupation. Employers should provide both long-ten
projections and notice before initiating the interviewing and hiring process. These notif
requirements will take into consideration any need to protect the employer's proprietary

(4) Set appropriate record keeping and monitoring requirements. The First Source
Administration shall develop easy-to-use forms and record keeping requirements for do
compliance with the agreement. To the greatest extent possible, these requirements shal
employer's existing record keeping systems, be nonduplicative, and facilitate a coordin
information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first sc
requirements of this Chapter. The FSHA will work with City departments to develop er
effort requirements appropriate to the types of contracts and property contracts handled
department. Employers shall appoint a liaison for dealing with the development and im
employer's agreement. In the event that the FSHA finds that the employer has taken act
the purpose of circumventing the requirements of this Chapter, that employer shall be s
sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Ch

(8) Set forth the City's obligations to develop training programs, job applicant ref
assistance, and information systems that assist the employer in complying with this Ch

(9) Require developer to include notice of the requirements of this Chapter in leas
other occupancy contracts.

(c) The employer shall make the final determination of whether an economically
individual referred by the System is "qualified" for the position. Any qualified economi
individual who is hired by the employer shall have the same rights and obligations as al
in similar positions. The employer shall not discriminate against any employees on the
participation in the First Source Hiring Program. Any such discrimination shall be cons
the employer's "good faith" obligations under the agreement, and shall be subject to the
in Section 83.10 of this Chapter.

(d) Compliance by an employer with a City department's approved plan shall be d
compliance with the requirements of this Chapter.

(e) In any situation where the FSHA concludes based upon application by the em
compliance with this Chapter would cause economic hardship the FSHA may grant a
all of the requirements of this Chapter. (Added by Ord. 264-98, App. 8/21/98)

individuals referred by the System for employment; provided however, if the employer
nondiscriminatory screening criteria, the employer shall have the sole discretion to inte
individuals referred or certified by the San Francisco Workforce Development System
economically disadvantaged individuals. The duration of the first source interviewing r
set forth in each agreement but shall not exceed 10 days. During that period, the emplo
agreement may publicize the positions in accordance with the agreement. A need for ur
hires must be evaluated, and appropriate provisions for such a situation must be made i

(3) Set appropriate requirements for providing notification of available entry level
San Francisco Workforce Development System so that the System may train and refer
qualified economically disadvantaged individuals to employers subject to the agreemen
should include such information as employment needs by occupational title, skills, and/
required, the hours required, wage scale and duration of employment, identification of
training positions, identification of English language proficiency requirements, or abser
projected schedule and procedures for hiring for each occupation. Employers subject to
should provide both long-term job need projections, and notice before initiating the inte
process. These notification requirements will take into consideration any need to protec
proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source
Administration shall develop easy to use forms and record keeping requirements for do
compliance with the agreement. To the greatest extent possible, these requirements shal
employer's existing record keeping systems, be nonduplicative, and facilitate a coordin
information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first sc
requirements of this Chapter. The FSHA will work with City departments to develop er
effort requirements appropriate to the types of permits handled by each department. Em
appoint a liaison for dealing with the development and implementation of the employer
event that the FSHA finds that the employer has taken actions primarily for purpose of
requirements of this Chapter, that employer shall be subject to the sanctions set forth in
this Chapter.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Ch

(8) Provide that the agreement shall be recorded.

(9) Set forth the City's obligations to develop training programs, job applicant ref
assistance, and information systems that assist the employer in complying with this Ch

(10) Require developer to include notice of the requirements of this Chapter in lea
other occupancy contracts.

(b) The employer subject to the agreement shall make the final determination of w
economically disadvantaged individual referred by the System is "qualified" for the pos
economically disadvantaged individual who is hired by the employer shall have the sam
obligations as all other employees in similar positions. The employer shall not discrimi
employees on the basis of participation in the First Source Hiring Program. Any such di
be considered a breach of the employer's "good faith" obligations under the agreement,
to the sanctions set forth in Section 83.12 of this Chapter.

(c) Compliance by an employer subject to the agreement with a City department's be deemed to be compliance with the requirements of this Chapter. In situations where comply with the requirements of this Chapter as part of a contract or property contract, must apply for permits for the same project that is the subject of the contract or property employer will be deemed to be in compliance with this Chapter.

(d) In any situation where the FSHA concludes based upon application by the em compliance with this Chapter would cause economic hardship or the burden of complia disproportionate to the impacts of the employer's commercial activity(ies) in the City, t an exception to any or all of the requirements of this Chapter. (Added by Ord. 264-98,

## SEC. 83.12. VIOLATION OF FIRST SOURCE HIRING IN PERMITS.

(a) The sole financial remedy for violation of the requirements of this Chapter is t below. Additionally, failure to comply with the conditions imposed on the permit may provisions of San Francisco Building Code Section 104.2.

(b) If upon administrative review, as provided for in Subsection (e) of this Sectio determines that entry level positions were not made available to the System for referral economically disadvantaged individuals as specified in the Employer's First Source Hir the employer does not remedy the violations, that employer shall be assessed a penalty $2,070 for every new hire for an entry level position improperly withheld from the first process.

(c) Lack of referrals of qualified economically disadvantaged individuals, delay i causes beyond the reasonable control of the employer, emergency, or other good cause the employer to the FSHA may be a defense to the assessment of a penalty under this C

(d) If the developer fulfills its obligations as set forth in this Chapter, the develop responsible for the failure of an employer to comply with the requirements of this Chap

(e) The assessment of a penalty and the evaluation of any defenses and mitigating made by the FSHA.

(f) The FSHA shall establish procedures that allow an employer to respond to any noncompliance made by a City department or other interested party, or any determinati noncompliance with this Chapter made by the FSHA, prior to the imposition of any san (Added by Ord. 264-98, App. 8/21/98)

## SEC. 83.13. RECORDS.

The employers subject to provisions of this Chapter shall maintain and provide the F records necessary to document compliance with the requirements of this Chapter as det source agreement. (Added by Ord. 264-98, App. 8/21/98)

## SEC. 83.14. GENERAL EXCLUSIONS AND LIMITATIONS.

Nothing in this Chapter shall be interpreted to interfere with, or prohibit existing lab nondiscrimination programs, workforce training pro-grams and agreements, economica hiring and retention goals. This Chapter is to be implemented a manner that does not co applicable federal or State laws.

Nothing in this Chapter shall be interpreted in a manner that would displace an empl
workers.

The FSHA may reach agreements with other governmental agencies that have simil
to ensure that requirements imposed pursuant to this Chapter and by other governmenta
do not create an undue burden or conflicting obligations on employers, and to make the
the purpose of this Chapter feasible where the City and other jurisdictions have joined t
goods, services or public works. (Added by Ord. 264-98, App. 8/21/98)

## SEC. 83.15. COLLECTIVE BARGAINING AGREEMENTS.

Notwithstanding anything to the contrary in this Chapter, if a first source hiring agre
with an existing collective bargaining agreement to which an employer is a party, the c
agreement shall prevail. However, the employer will be obligated to provide workforce
to the San Francisco Workforce Development System and the employer will be obligat
faith efforts to comply with the requirements of its first source hiring agreement that do
the collective bargaining agreement. (Added by Ord. 264-98, App. 8/21/98)

## SEC. 83.16. SEVERABILITY.

If any part or provision of this Chapter, or the application thereof to any person or ci
invalid, the remainder of this Chapter, including the application of such part or provisio
or circumstances, shall not be affected thereby and shall continue in full force and effec
provisions of this Chapter are severable. (Added by Ord. 264-98, App. 8/21/98)

## SEC. 83.17. LIMITED TO PROMOTION OF GENERAL WELFARE.

In undertaking the adoption and enforcement of this Chapter, the City and County o
assuming an undertaking only to promote the general welfare. It is not assuming, nor is
commissions, departments, officers and employees, an obligation for breach of which i
damages to any person who claims that such breach proximately caused injury. (Added
App. 8/21/98)

## SEC. 83.18. OPERATIVE DATE AND APPLICATION.

Phase I, as defined in 83.4(n) shall become operative 30 days after the date the ordin
Chapter becomes effective, Phase II, as defined in Section 83.4(o) of this Chapter will
months after adoption of a resolution by the FSHA that Phase I has been implemented.
intended to have prospective effect only, and shall not be interpreted to impair any righ
existing City contract or property contract or permit. The provisions of this Chapter sha
after the effective date of this ordinance. (Added by Ord. 264-98, App. 8/21/98)

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ity and County of San Francisco

Willie Lewis Brown, Jr.
Mayor

Human Rights Commission
Contract Compliance
Dispute Resolution/Fair Housing
Minority/Women/Local Business Enterprise
Lesbian Gay Bisexual Transgender & HIV Discrimination

Virginia Harmon
Interim Executive Director

o: Prospective Tenant of the Port of San Francisco

rom: Selormey Dzikunu, Contract Compliance Officer
Human rights Commission

ate: July 25, 2001

ubject: Affirmative Action Requirements and Non-Discrimination Provisions
Under Chapter 12 B & 12C Ordinances (San Francisco)

Tenants obtaining leases, subleases, operating or space permits with the Port of San Francisco must adhere to two City Ordinances of the San Francisco Administrative Code. Chapter 12B deals with Non-discrimination and Affirmative Action in Contracts while Chapter 12C deals with Non-Discrimination in Property Contracts. (Attached are copies of Chapter 12B and 12C Ordinances for review.)

a city department of the City and County of San Francisco, the Human Rights Commission (HRC) is mandated to monitor the non-discriminatory employment practices and contract compliance relative to affirmative action of the Port tenants. Tenants conducting business within San Francisco are required to implement affirmative action to ensure equal opportunity in employment without regard to race, color, religion, ancestry, national origin, age, sex, sexual orientation, AIDS/ARC or disability. HRC also encourages employers to insure that the workplace is free from sexual harassment.

The HRC recommends the hiring, training, and promotion of minorities, women, and persons with disabilities to achieve parity with the available workforce at all levels of employment.

When applicable, goals and timetables covering affirmative action employment programs will be established and negotiated as part of an overall affirmative action agreement between the Tenant and the City of County of San Francisco. If the affirmative action goals set forth are not obtained, the Tenant must demonstrate to the HRC that good faith efforts are made.

HRC affirmative action goals will be negotiated in the following areas: full time employment of minorities, disabled, and women in management and decision-making positions. Part-time and/or summer employment as well as on-the-job training for minorities, women and the disabled will be negotiated as part of the affirmative action agreement.

**To meet these goals, a list of community employment agencies which can assist in the recruitment of minorities, women, and persons with disabilities is available from the HRC.**

25 Van Ness Avenue, Suite 800, San Francisco CA 94102-6033
Tel (415) 252-2500 • Fax (415) 431-5764 • TTY/TDD (415) 252-2550 • http://www.ci.sf.ca.us/sfhumanrights
The office location is accessible to and accommodates people with disabilities.

PARKING

Prior to the approval of the tenant's contract, lease, or permit with the Port, the HRC Workforce forms must be completed and returned to the HRC within the due date of the bid proposal or no later than five (5) business days subsequent to the bid opening. In cases where there is no bid, the Workforce forms must be submitted to HRC within five (5) business days upon obtaining a permit, contract, or lease.

**Failure to submit the form(s) in a timely manner may result in the denial of the Tenant from conducting business within the City and County of San Francisco.**

If the Tenant requests an extension on submission of the Workforce forms, prior approval must be obtained with the HRC.

Please return Workforce Forms A & B to:

Selormey Dzikunu
Human Rights Commission Office
Port of San Francisco
Pier 1
San Francisco, CA 94111

Note: If the Tenant does not have employees located on Port property and only leases a space, obtains a permit, or provides a specific ongoing service with the Port, complete only **Workforce From A.** Please also include a letter briefly describing the permit or leasing arrangement or specific service with the Port.

If further assistance on the affirmative action requirements or on the Workforce forms is needed, contact me at HRC (415) 274-0511.

CITY AND COUNTY OF SAN FRANCISCO
HUMAN RIGHTS COMMISSION

# QUICK REFERENCE GUIDE TO EQUAL BENEFITS COMPLIANCE

## Step 1: Understand the Law

**at does the law require?**

ective June 1, 1997, Chapter 12B of the San Francisco ministrative Code was amended to prohibit the City and County San Francisco from entering into contracts or leases with any ity that discriminates in the provision of benefits between ployees with domestic partners and employees with spouses, d/or between the domestic partners and spouses of employees.

**ho is covered by this law?**

ll entities who hold or seek to enter into contracts with the City d County of San Francisco for public works or improvements, r a franchise, concession or lease of City property, or for goods, rvices or supplies to be purchased at the expense of the City and ounty are covered by this law. The law does not cover entities ith which the City does less then $5,000 worth of business per ear. Subcontractors are not required to comply with this law. ach party to a joint venture must comply independently.

**t benefits are covered?**

n most cases, the law applies to all benefits offered by a contractor o its employees who have spouses or domestic partners and all benefits offered directly to such spouses or domestic partners, even when the employee pays the entire cost of the benefit. This includes, but is not limited to, medical insurance, retirement plans, leaves of absence (such as bereavement and family medical leave), use of company facilities, and discounts.

**What is a domestic partner?**

The law defines a domestic partner as any person whose domestic partnership is currently registered with a governmental body pursuant to state or local law. This includes both same-sex and opposite-sex couples. To comply with the law, verification of domestic partnerships may take place only to the same degree and in the same manner as marriages are verified.

**What if a company will comply but needs time to do it?**

Once a contractor makes it clear that it will comply with Chapter 12B (by submitting a 12B Declaration indicating compliance), in certain situations ending discrimination in benefits may be delayed. For instance, offering medical insurance may be delayed until the contractor's next open enrollment period; other benefits, such as bereavement leave, may be delayed until the contractor's personnel policies can be revised. Benefits offered through a nion agreement may also be delayed under certain circumstances. or more information, see Rules of Procedure section II.E., Substantial Compliance Affidavit (Form HRC-12B-103), or contact the HRC.

**What if a contractor is unable to offer benefits equally?**

Some contractors are unable to find an insurance company willing to offer domestic partner coverage. Others may find that a federal law prohibits extending a particular benefit to domestic partners on the same basis as it is extended to spouses. When a contractor takes all reasonable measures to stop discriminating, but can't for reasons outside its control, it can comply with Chapter 12B if it agrees to pay a cash equivalent. The HRC decides whether reasonable measures have been taken. A cash equivalent is the amount of money paid by an employer for the spousal benefit that is unavailable for domestic partners, or vice versa. For more information, see Rules of Procedure section III., Reasonable Measures Application (Form HRC-12B-102) or contact the HRC.

## ➢Step 2: Complete a Chapter 12B Declaration (Form HRC-12B-101)

**Answering the Questions**

*Section 1* asks for information about your company. Please complete all items; if you don't know your vendor number, you may leave that item blank.

*Section 2, Question 1A* asks whether your company prohibits discrimination against people based on the categories listed. This policy does not need to be in writing.

- Answer "YES" if your company does have such a policy.
- Answer "NO" if your company does not have such a policy.

*Question 1B* asks whether your company agrees to include a nondiscrimination clause in all subcontracts entered into for the performance of a substantial portion of any contracts you have with the City. This clause must include all of the categories listed in question 1a. You must answer this question even if your company will not be entering into any subcontracts associated with work performed for the City.

- Answer "YES" if you will agree to include a non-discrimination clause in subcontracts.
- Answer "NO" if you will not agree to include a non-discrimination clause in subcontracts.

*Question 2A* asks whether your company offers benefits (such as medical insurance) to employees' spouses or to employees because they are married (such as bereavement leave which can be taken because of the death of a spouse, or family medical leave which can be taken because of a spouse having a serious medical condition).

- Answer "YES" if you offer any such benefits.
- Answer "NO" if you do not offer any such benefits.
- If you have no employees, you should answer "NO".

> *Helpful hint: You are considered as offering a benefit even i you don't pay for it. If access to the benefit is offered, but th cost must be paid in whole or in part by the employee, yo should still answer "YES".*

employees because they are in a domestic partnership (such as bereavement leave which can be taken because of the death of a domestic partner, or family medical leave which can be taken because of a domestic partner having a serious medical condition).

- Answer "YES" if you offer any such benefits.
- Answer "NO" if you do not offer any such benefits.
- If you have no employees, you should answer "NO".

> *Helpful Hint: To comply, your answers to questions 2A and 2B should be the same. In very limited circumstances, you may comply without offering benefits equally. See Reasonable Measures Application, Form HRC 12B-102.*

*Question 2C* should be filled out ONLY if you have answered "YES" to question 2A and/or 2B. It asks you to indicate which benefits you offer to spouses (or employees because they are married), which benefits you offer to domestic partners (or employees because they are in a domestic partnership), and which benefits you do not offer. Please indicate only those benefits offered. If you offer benefits not already listed, write them in where it says "other". *Remember, offering access to a benefit is still considered a benefit, even if your company does not pay for it.*

*Question 2D* should be filled out only if your company is *unable* to offer all benefits equally, despite taking all reasonable measures, and agrees to pay a cash equivalent to those employees to whom benefits are not offered equally. You must complete Form HRC-12B-102 and submit it with the supporting documentation called for by the form, along with your Declaration. HRC will decide if reasonable measures have been taken.

## ➢Step 3: Attach the Necessary Documentation

*Section 3* states that you must submit documentation that verifies all benefits marked in your answer to Question 2C are offered in a nondiscriminatory manner. It is best if you submit this documentation along with your Declaration form. If you need to delay the submission of documentation, please see Step 1 for information. For benefit policies that are unwritten, submit a letter to the HRC indicating this. Use the list below as a guide for the type of documentation needed.

**Medical Insurance** - A statement from your medical insurance provider that spouses and domestic partners receive equal coverage in your medical plan. This may be in a letter from your insurance provider, or reflected in the eligibility section of your official insurance plan document.

**Pension (including 401k plans)** - The sections of your pension plan detailing how employees receive benefits. This should cover joint annuity options and pre-retirement death benefits. Documentation should indicate that employees with domestic partners and employees with spouses receive the same benefits and payment options.

**Bereavement Leave** - Your bereavement leave or funeral leave policy indicating the benefit is offered equally. If your policy allows employees time off from work because of the death of a spouse, it should also allow for time off because of the death of a domestic partner. If the policy allows time off for the death of a parent in-law or other relative of a spouse, it must include time off for the death of a domestic partner's equivalent relative.

policy. All companies with 50 or more employees offer this benefit. Your policy should indicate that emplo may take leave because of the serious medical conditio their spouse or domestic partner.

**Parental Leave** - Your company's policy indicatin employees may take leave for the birth or adoption o If leave is available for step-children (the spouse's child) leave should also be made available for the child of a dom partner.

**Employee Assistance Program** - Your company's emplo assistance program policy confirming that spouses, dome partners and their parents and children are equally eligible ineligible) for such benefits.

**Relocation & Travel** - Your company's policy confirm that expenses for travel or relocation will be paid on the sa basis for spouses and domestic partners of employees.

**Discounts, Facilities & Events** - Your company's po confirming that to the extent discounts, facilities (such a gym) and events (such as a company holiday party) equally available to spouses and domestic partners employees.

**Credit Union** - Documentation from the credit un indicating that spouses and domestic partners have eq access to credit union services.

**Child Care** - Documentation that the children of spou (step-children) and children of domestic partners have eq access to child care services.

**Other Benefits** - Documentation of any other benefits li indicate that they are offered equally.

## ➢Step 4: Use the Available Resources

The Human Rights Commission has developed resources help with the compliance process:

**Rules of Procedure** for guidelines on how the Ordinance being implemented; detailed explanation of the terms used the Ordinance and information on jurisdiction and ot matters.

**Resource Materials** for in-depth answers to commonly ask questions on the Ordinance's impact on medical benef pensions plans, taxation; information on the cost of provid domestic partner benefits; model employee policies; and a of domestic partner registries.

**Insurance List** of insurance providers around the coun willing to write policies inclusive of domestic partners.

You can get free copies of these documents by calli the Human Rights Commission at 415-252-2500, download them from the Commission's website at: http://www.ci.sf.ca.us/sfhumanrights.

CITY AND COUNTY OF SAN FRANCISCO
HUMAN RIGHTS COMMISSION

# S.F. ADMINISTRATIVE CODE CHAPTERS 12B & 12C
# DECLARATION: NONDISCRIMINATION IN CONTRACTS AND BENEFITS
(HRC-12B-101)

DATE & TIME RECEIVED BY HRC
(FOR HRC USE ONLY)

## ction 1. Vendor Information

ame of Company: ______________________________

ame of Company Contact Person: ______________________________

hone Number: ____________________ Fax Number: ____________________

Vendor Number (if known): ______________________________

Federal ID or Social Security Number: ______________________________

Approximate Number of Employees in the U.S.: ______________________________

Are any of your employees covered by a collective bargaining agreement or union trust fund? ☐ Yes ☐ No

Union name(s): ______________________________________________________________

## ection 2. Compliance Questions

### *Question 1. Nondiscrimination – Protected Classes*

A. Does your company agree to not discriminate against your employees, applicants for employment, employees of the City, or members of the public on the basis of the fact or perception of a person's membership in the categories listed below? *Please note: a "YES" answer means your company agrees it will not discriminate; a "NO" answer means your company refuses to agree that it will not discriminate. Please answer yes or no to each category.*

| | | | | | |
|---|---|---|---|---|---|
| • Race | ☐ Yes | ☐ No | • Sex | ☐ Yes | ☐ No |
| • Color | ☐ Yes | ☐ No | • Sexual orientation | ☐ Yes | ☐ No |
| • Creed | ☐ Yes | ☐ No | • Gender identity (transgender status) | ☐ Yes | ☐ No |
| • Religion | ☐ Yes | ☐ No | • Domestic partner status | ☐ Yes | ☐ No |
| • National origin | ☐ Yes | ☐ No | • Marital status | ☐ Yes | ☐ No |
| • Ancestry | ☐ Yes | ☐ No | • Disability | ☐ Yes | ☐ No |
| • Age | ☐ Yes | ☐ No | • AIDS/HIV status | ☐ Yes | ☐ No |
| • Height | ☐ Yes | ☐ No | • Weight | ☐ Yes | ☐ No |

B. Does your company agree to insert a similar nondiscrimination provision in any subcontract you enter into for the performance of a substantial portion of the contract you have with the City? *Please note: you must answer this question even if you do not intend to enter into any subcontracts.*

☐ Yes ☐ No

### *Question 2. Nondiscrimination – Equal Benefits for Employees with Spouses and Employees with Domestic Partners*

A. Does your company provide or offer access to any benefits to employees with spouses or to spouses of employees?

☐ Yes ☐ No

B. Does your company provide or offer access to any benefits to employees with domestic partners or to domestic partners of employees?

☐ Yes ☐ No

*Please note: for Questions 2A and 2B you should answer "YES" even if your employees must pay for some or all of the cost of spousal or domestic partner benefits.*

If you answered "NO" to both Questions 2A and 2B, go to Section 4 (on the back of this form), complete and sign the form, filling in all items requested.

If you answered "YES" to either or both Questions 2A and 2B, please continue to Question 2C.

(OVER)

C. Please check all benefits that apply to your answers above and list in the "other" section any additional benefits not already specified. Note: some benefits are provided to employees because they have a spouse or domestic partner, such as bereaveme leave; other benefits are provided directly to the spouse or domestic partner, such as medical insurance.

| BENEFIT | Yes for Employees with Spouses | Yes for Employees with Domestic Partners | No, this Benefit is Not Offered | Documentation of this Benefit is Submitted with this Form |
|---|---|---|---|---|
| • Health | ☐ | ☐ | ☐ | ☐ |
| • Dental | ☐ | ☐ | ☐ | ☐ |
| • Vision | ☐ | ☐ | ☐ | ☐ |
| • Retirement (Pension, 401(k), etc.) | ☐ | ☐ | ☐ | ☐ |
| • Bereavement | ☐ | ☐ | ☐ | ☐ |
| • Family Leave | ☐ | ☐ | ☐ | ☐ |
| • Parental Leave | ☐ | ☐ | ☐ | ☐ |
| • Employee Assistance Program | ☐ | ☐ | ☐ | ☐ |
| • Relocation & Travel | ☐ | ☐ | ☐ | ☐ |
| • Company Discount, Facilities & Events | ☐ | ☐ | ☐ | ☐ |
| • Credit Union | ☐ | ☐ | ☐ | ☐ |
| • Child Care | ☐ | ☐ | ☐ | ☐ |
| • Other | ☐ | ☐ | ☐ | ☐ |

Note: If you can't offer a benefit in a nondiscriminatory manner *because of reasons outside your control*, (e.g., there are no insurance providers in your area willing to offer domestic partner coverage) you may be eligible for Reasonable Measures compliance. To comply on this basis, you must agree to pay a cash equivalent, submit a completed Reasonable Measures Application Form (HRC-12B-102) with all necessary attachments, and have your application approved by the HRC. For more information, see Rules of Procedure section II B or contact the HRC.

## ➢ Section 3. Required Documentation

**YOU *MUST* SUBMIT SUPPORTING DOCUMENTATION**

**to verify each benefit marked in Question 2C.** Without proper documentation, your company cannot be certified as comp with Chapter 12B. For example, to document medical insurance submit a statement from your insurance provider or a copy of eligibility section of your plan document; to document leave programs, submit a copy of your company's employee handbook. documentation for a particular benefit does not exist, attach an explanation. For more information see the Quick Reference Gui at www.ci.sf.ca.us/sfhumanrights/quickref.htm or contact the HRC.

Have you submitted supporting documentation for each benefit offered? ☐ Yes ☐ No

## ➢ Section 4. Executing the Document

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this ______ day of ______________, in the year ________, at ______________________, ______
(City) (State)

Signature ______________________

Mailing Address ______________________

Name of Signatory (please print) ______________________

City, State, Zip Code ______________________

Title ______________________

➔ Return this form to: HRC, 25 Van Ness Ave., Suite 800, San Francisco, CA 94012-6033, or to the City department that sent it to you if the department so requests.

✓ Resource Materials and additional copies of this form may be found at: www.ci.sf.ca.us/sfhumanrights/12b.htm.

☎ For assistance please contact the Human Rights Commission at 415-252-2500.

Port Staff:____________

## HUMAN RIGHTS COMMISSION
## COMPANY/AGENCY WORKFORCE INFORMATION (A)

ete this form & FORM B (OVER). If NO employees are on Port property, complete only FORM A: 1,2,4,8 and 9.

| | |
|---|---|
| / Department: Port of San Francisco | Date: |
| ;tatus: [ ]Contract [ ]Lease [ ]Permit | [ ]Tenant [ ]Subtenant [ ]Lessee [ ]Sublessee |
| of Business: | Port Location: |
| ity-Owned & Controlled? (MBE) Yes__ No__<br>en-Owned & Controlled? (WBE) Yes__ No__ | Ethnic Ownership: Amer. Ind.__ Asian__ Black__<br>Filipino__ Hispanic__ White__ Other__________ |

| | |
|---|---|
| ımpany/Agency: | Owner/CEO: |

ıess Address: City: Suite/Floor: State: Zip:

ng Address: City: State: Zip:

ame, Title, and telephone number of personnel who is responsible for recruitment (R), hiring (H), and termination (T). lentify the responsibility by each letter under Title.

| | | |
|---|---|---|
| ıe: | Title: | Phone: |
| ıe: | Title: | Phone: |

e, Title, and telephone number of personnel who completed these forms.

| | | |
|---|---|---|
| ıe: | Title: | Phone: |

Does the company/agency have the following?

Equal Employment Opportunity Policy? [ ]Yes [ ]No

Affirmative Action Policy? [ ]Yes [ ]No

Grievance Procedures Policy? [ ]Yes [ ]No

EE0-1 Report? [ ]Yes [ ]No If Yes, submit a copy.

How are employees hired?

[ ]Job Posting [ ]Newspaper [ ]Community/Employment Agencies [ ]EDD

[ ]College [ ]Union [ ]Word of Mouth [ ]Other____________

Indicate method used in determining employees' ethnic identity.

[ ]Self-identification (person identifying himself/herself)

[ ]"On-Sight" Identification (personnel identifying employee)

[ ]Other (please specify)____________________________

Company/Agency has ______employees located on Port property.

On behalf of the company/agency, I am authorized to acknowledge and abide by the provisions relative to affirmative action and non-discrimination practices as outlined under Chapter 12B and 12C Ordinances.

__________ Signature __________ Print Name __________ Title __________ Date

leturn Workforce Form(s) to Mr. Selormey Dzikunu, Human Rights Commission Office, Port of San Francisco, Pier 1, San rancisco, CA 94111, (415) 274-0511. This workforce information is confidential and not released to the public.

# Compliance Declaration

## Instructions

This declaration must be completed, signed and returned to the City prior to award. Without this completed declaration, the City cannot award a contract to you. Therefore, the City encourages all vendors to complete the form so that it will be on file when a contract is to be awarded.

## Scope

This declaration covers all awards from the City that you may receive for the duration of the MBE/WBE/LBE Ordinance. Currently, the Ordinance by its terms expires on June 30, 1997.

## If You Have Already Submitted a Declaration

If you already have submitted a complete signed Compliance Declaration to any City department, you need not have the declaratio signed again. Contact the City department which sent you this to ascertain whether your previously submitted declaration com with this request. The department may advise you either to submit a copy of your previous declaration or to disregard this request.

## Declaration

1. I declare under penalty of perjury and the laws of California, that I will ensure that my firm complies fully with the provisions of Chapter 12B of the San Francisco Admin. Code (Nondiscrimination in Contracts); Chapter 12D of the San Francisco Admin. Code (MBE/WBE/LBE Ordinance--III) and its implementing Rules and Regulations.

2. I acknowledge and hereby agree that upon a finding of willful noncompliance with the provisions of Chapter 12B, the City is authorized to impose penalties which may include financial penalties and disqualification from providing goods and services to the City for a period not to exceed two years.

3. I acknowledge and hereby agree that upon a finding of willful noncompliance with the provisions of Chapter 12D, the City is authorized to impose penalties which may include any of the following: (a) refusal to certify the award of a contract; (b) the suspension of a contract; (c) the withholding of funds; (d) the revision of a contract for material breach of contract; (e) disqualification of my firm from eligibility for providing goods and services to the City for a period not to exceed five years.

4. I acknowledge and hereby agree that if my firm willfully fails t comply with the provisions of Chapter 12D, my firm shall be liable for liquidated damages for each contract in an amount equal to my firm's net profit on the contract, or 10% of the total amount of the contract, or $1,000, whichever is greatest. The amount of liquidated damages imposed will be determined by the Director of the HRC after investigation pursuant to Chapter 12D.14C.

5. I acknowledge and hereby agree that any liquidated damages assessed against me by the Director of the HRC shall be payab to the City upon demand. I further acknowledge and hereby agree that any liquidated damages assessed may be withheld from any monies due to me on any contract with the City.

6. A signature by the bidder or proposer affixed to this declaratio constitutes an agreement with the City to comply with the provisions of Chapters 12B and 12D of the San Francisco Admin. Code where applicable.

7. I acknowledge and hereby agree that I will advise the City if appropriate execute a subsequent affidavit, if there is a chang in this entity's business organization structure or business practices such that the information in this affidavit is no longer accurate.

I declare (or certify) under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized t bind this entity contractually.

Executed this _______ day of ________________, 19____, at ________________________, ____________________.
(City) (State)

______________________________
Signature

______________________________
Name of Signator

______________________________
Title

______________________________
Telephone Number

______________________________
Name of Company

______________________________
Mailing Address

______________________________
City, State, ZIP

______________________________
Federal ID or Social Security Number

Routing: Return this document to the City department which sent it to you. Keep a copy for your records.

HRC Form 3 (6-92)

COMPANY:__________ ADDRESS:__________ CITY:__________ STATE:_____ Z______

REPORT PERIOD:________TO________
Month, Yr. Month, Yr.

CHECK STATUS:
Ethnic Ownership: Am. Ind.___ Asian___ Black___ Filipino___ Hispanic___ White___ Other______
MBE: YES______ NO______ WBE: YES______ NO______

Be sure that the total adds up correctly on each column: vertically and horizontally.

| EMPLOYEE CATEGORIES Status by Job | TOTAL EMPLOYEES | | AMER. IND/ ALASK.NTV | | ASIAN/ PAC. ISL. | | BLACK | | FILIPINO | | HISPANIC | | TOTAL MINORITY | | PERCENTAGE MINORITY | | WHITE | | PERCENTAGE WHITE | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | M | F | M | F | M | F | M | F | M | F | M | F | M | F | M | F | M | F | M | F |
| OFFICIALS AND MANAGERS | | | | | | | | | | | | | | | | | | | | |
| PROFESSIONALS | | | | | | | | | | | | | | | | | | | | |
| TECHNICIANS | | | | | | | | | | | | | | | | | | | | |
| SALES | | | | | | | | | | | | | | | | | | | | |
| OFFICE AND CLERICAL | | | | | | | | | | | | | | | | | | | | |
| SKILLED CRAFTWORKERS | | | | | | | | | | | | | | | | | | | | |
| SEMI-SKILLED OPERATORS | | | | | | | | | | | | | | | | | | | | |
| LABORERS | | | | | | | | | | | | | | | | | | | | |
| SERVICE WORKERS | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | |
| GRAND TOTAL | | | | | | | | | | | | | | | | | | | | |

CONTACT PERSON:__________ TITLE:__________ PHONE:__________ DATE:__________

# CHAPTER 12B
# NONDISCRIMINATION IN CONTRACTS

ec. 12B.1. All Contracts and Property Contracts to Include Nondiscrimination Provisions; Definitions.
Sec. 12B.2. Nondiscrimination Provisions.
Sec. 12B.3. Human Rights Commission Empowered.
Sec. 12B.4. Nondiscrimination Guidelines.
Sec. 12B.5. Chapter Applies Only to Discriminatory Employment Practices.
Sec. 12B.5-1. Nonapplicability, Exceptions and Waivers.
Sec. 12B.6. Severability.

## SEC. 12B.1. ALL CONTRACTS AND PROPERTY CONTRACTS TO INCLUDE NONDISCRIMINATION PROVISIONS; DEFINITIONS.

(a) All contracting agencies of the City, or any department thereof, acting for or on behalf of the City and County, shall include in all contracts and property contracts hereinafter executed or amended in any manner or as any portion thereof, a provision obligating the contractor not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome, HIV status (AIDS/HIV status), weight, height, association with members of classess protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter against any employee of, any City employee working with, or applicant for employment with such contractor and shall require such contractor to include a similar provision in all subcontracts executed or amended thereunder.

(b) No contracting agency of the City, or any department thereof, acting for or on behalf of the City and County, shall execute or amend any contract or property contract with any contractor that discriminates in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits as well as any benefits other than bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to State or local law authorizing such registration, subject to the following conditions. In the event that the contractor's actual cost of providing a certain benefit for the domestic partner of an employee exceeds that of providing it for the spouse of an employee, or the contractor's actual cost of providing a certain benefit for the spouse of an employee exceeds that of providing it for the domestic partner of an employee, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor conditions providing such benefit upon the employee agreeing to pay the excess costs. In addition, in the event a contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor provides the employee with a cash equivalent.

(c) Definitions. As used in this Chapter the following words and phrases shall have the meanings indicated herein:

"Age" shall mean the age of any employee or applicant for employment who has attained the age of 40 years and has not attained the age of 65 years. For the purposes of this Chapter, discrimination because of age shall mean dismissal from employment of, or refusal to employ or rehire any person because of his or her age, if such person has attained the age of 40 years and has not attained the age of 65 years, if the person is physically able and mentally competent to perform the services required. Age limitations of apprenticeship programs in which the State or its political subdivisions participate shall not be considered discriminatory within the meaning of this Chapter.

"Amend" shall mean to substantively change the terms of a pre-existing contract, and shall not include amendments to decrease the scope of work or the amount to be paid under a contract. Construction change orders shall not be construed as contract amendments for the purposes of this Chapter.

"City" shall mean the City and County of San Francisco.

"Commission" shall mean the Human Rights Commission of the City and County of San Francisco.

"Contract" shall mean an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City and County or to be paid out of moneys deposited in the treasury or out of trust moneys under the control or collected by the City and County, and does not include property contracts, agreements entered into after June 1, 1997 pursuant to settlement of legal proceedings, contracts for urgent litigation expenses, or contracts for a cumulative amount of $5,000 or less per vendor in each fiscal year.

"Contractor" means any person or persons, firm, partnership, corporation, or combination thereof, who enters into a contract or property contract with a department head or officer empowered by law to enter into contracts or property contracts on the part of the City and County.

"Director" shall mean the Director of the Human Rights Commission.

"Disability" shall mean a physical or mental impairment which substantially limits one or more major life activities, or a record of such an impairment.

"Domestic partner" shall mean any person who has a currently registered domestic partnership with a governmental body pursuant to State or local law authorizing such registration.

"Gender identity" shall mean a person's various individual attributes as they are understood to be masculine and/or feminine.

"Property contract" shall mean a written agreement for the exclusive use or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements. For the purposes of this Chapter, "exclusive use" means the right to use or occupy real property to the exclusion of others, other than the rights reserved by the fee owner. "Property contract" shall not include a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit, except that "property contract" shall include such permits granted to a private entity for the use of City property for the purpose of a for-profit activity. "Property contract" shall also not include street excavation, street construction or street use permits, agreements for the use of City right-of-way where a contracting utility has the power of eminent domain, or agreements governing the use of City property which constitutes a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally recognized as protected by the First Amendment to the U.S. Constitution, or which are primarily recreational in nature.

"Qualified disabled employee" shall mean a person able to perform the essential functions of a job with reasonable accommodation.

"Sex" shall mean the character of being male or female.

xual orientation" shall mean the status of being lesbian, gay, bisexual or heterosexual.

"Subcontract" shall mean an agreement to (i) provide goods and/or services, including construction labor, aterials or equipment, to a contractor, if such goods or services are procured or used in the fulfillment of the ontractor's obligations arising from a contract with the City, or (ii) to transfer the right to occupy or use all or a ortion of a real property interest subject to a property contract to a subcontractor and pursuant to which the ontractor remains obligated under the property contract.

"Subcontractor" means any person or persons, firm, partnership, corporation or any combination thereof, who nters into a subcontract with a contractor. Such term shall include any person or entity who enters into an greement with any subcontractor for the performance of 10 percent or more of any subcontract.

(d) The requirements of this Chapter shall apply to (i) any of a contractor's operations within San Francisco; ii) a contractor's operations on real property outside of San Francisco owned by the City or which the City has a ight to occupy if the contractor's presence at that location is connected to a contract or property contract with the City; (iii) where the work is being performed by a contractor for the City within the United States; and (iv) any of a contractor's operations elsewhere within the United States. (Amended by Ord. 489-86, App. 12/18/86; Ord. 433-94, App. 12/30/94; Ord. 215-96, App. 5/30/96; Ord. 440-96, App. 11/8/96; Ord. 481-96, App. 12/20/96; Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97; Ord. 255-99, File No. 991146, App. 10/8/99; Ord. 101-00, File No. 000476, App. 5/26/2000)

## SEC. 12B.2. NONDISCRIMINATION PROVISIONS.

Every contract and property contract for or on behalf of the City shall incorporate by reference and require the ntractor to comply with the provisions of Section 12B.2. In addition, all contractors must incorporate by reference in all subcontracts and require subcontractors to comply with the requirements set forth in Sections 12B.2(a) and 12B.2(c) through 12B.2(k), and failure to do so shall constitute a material breach of contract.

In the performance of a contract the contractor agrees as follows:

(a) The contractor or subcontractor will not discriminate against any employee, City and County employee working with such contractor or subcontractor, or applicant for employment with such contractor or subcontractor on the basis of the fact or perception of that person's race, color, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height, AIDS/HIV status, or association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter. Discrimination on the basis of sex includes sexual harassment as defined in Section 16.9-25(b) of this Code. The contractor or subcontractor will take action to ensure that applicants are employed, and that employees are treated equally during employment, without regard to the fact or perception of their race, color, creed, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or AIDS/HIV status. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. Nothing in this Chapter shall require or prohibit the establishment of new classifications of employees in any given craft. The provisions of this Section with respect to age shall not apply to (1) termination of employment because of the terms or conditions of any bona fide retirement or pension plan, (2) operation of the terms or conditions of any bona fide retirement or pension plan which has the effect of a minimum service requirement, and (3) operation of the terms or conditions of any bona fide group or insurance plan. The contractor or subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in such form and content as shall be furnished or approved by the awarding authority setting forth the provisions of this Section.

(b) The prime contractor shall state that the prime contractor does not, and will not during the term of the contract discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits as well as any benefits other than bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to State or local law authorizing such registration, subject to the following conditions. In the event that the contractor's actual cost of providing a certain benefit for the domestic partner of an employee exceeds that of providing it for the spouse of an employee, or the contractor's actual cost of providing a certain benefit for the spouse of an employee exceeds that of providing it for the domestic partner of an employee, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor conditions providing such benefit upon the employee agreeing to pay the excess costs. In addition, in the event a contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor provides the employee with a cash equivalent. The Director shall be the final arbiter of a contractor's or property contractor's compliance or substantial compliance with this Chapter and the Director's determination shall not be appealable to the Commission. Contractors shall treat as confidential to the maximum extent allowed by law or the requirements of contractor's insurance provider any request by an employee or applicant for employment for domestic partner or spousal benefits or any documentation of eligibility for domestic partner or spousal benefits submitted by an employee or applicant for employment.

In adopting this Section 12B.2(b), the intent of the Board of Supervisors is to equalize to the maximum extent legally permitted the total compensation between similarly situated employees with spouses and employees with domestic partners.

In particular, consistent with the severability clause set forth in Section 12B.6 below, the Board of Supervisors intends that if a court or agency of competent jurisdiction finds that a State or federal law, rule or regulation invalidates (1) the application of this Section to any business, person, type of compensation or benefit, or location; or (2) any other requirement of this Section, then the court or agency should sever the invalid clause and leave in effect the remainder of this Section.

(c) The contractor or subcontractor shall provide reasonable accommodation for qualified disabled applicants for employment and for qualified disabled employees. Said contractor or subcontractor need not provide reasonable accommodation if such would present an undue hardship. An undue hardship may include but not be limited to more than a de minimus cost, violation of the seniority rights of other co- workers as established by a bona fide seniority system, or a health or safety risk to the employee or co- employees. The burden of establishing an undue hardship rests on the employer.

(d) The contractor or subcontractor will in all solicitations or advertisements for employees placed by or on his or her behalf, state that qualified applicants will receive consideration for employment without regard to the fact or perception of their race, creed, religion, color, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or AIDS/HIV status.

(e) The contractor or subcontractor will send to each labor union or representative of workers with which he or she has a collective bargaining agreement or other agreement or understanding, a notice, in such form and content as shall be furnished or approved by the awarding authority, advising the said labor union or workers' representative of the contractor's or subcontractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) The contractor or subcontractor will permit access to its records of employment, employment advertisements, application forms, and other pertinent data and records by the Commission, the City's awarding authority or the Fair Employment and Housing Commission, for the purposes of investigation to ascertain compliance with the nondiscrimination provisions of this Chapter, and upon request shall provide evidence that the contractor has complied or will comply with the nondiscrimination provisions of this Chapter.

(g) A contractor or subcontractor shall be deemed to have breached the nondiscrimination provisions of this Chapter upon:

(1) A finding by the Director or such other official who may be designated by the Commission, that the ontractor or subcontractor has wilfully violated such nondiscrimination provisions; or

(2) A finding by the California Fair Employment and Housing Commission that a contractor or ubcontractor has violated any provision of the California Fair Employment and Housing Act or the ondiscrimination provisions of this Chapter, provided that the California Fair Employment and Housing ommission has issued a final order pursuant to Section 12970 of the Government Code, or has obtained a udgment and order enforcing the final order pursuant to Section 12973 of the Government Code; provided urther, that for the purposes of these provisions, an order or injunction shall not be considered final during the eriod within which (1) appeal may be taken, or (2) the same has been stayed by order of court, or (3) further roceedings for vacation, reversal or modification are in progress before a competent administrative or judicial ribunal.

(3) Upon such finding by the Director or other official designated by the Commission, or the California Fair Employment and Housing Commission, the awarding authority shall notify the contractor or subcontractor that unless the contractor or subcontractor demonstrates to the satisfaction of the Director or other official designated by the Commission, within such reasonable period as the Commission shall determine, that the violation has been corrected, action will be taken as set forth in Subparagraphs (h) and (i) hereof.

(4) The Commission shall, within 10 days of the date of issuance of any finding by the Director or other official designated by the Commission for the enforcement of this Chapter, mail to any person or persons affected by said finding, a copy of said finding, together with written notice of the right to appeal such finding. Notice of appeal must be filed in writing with the Chairperson of the Commission within 20 days of the date of mailing said copy and notice.

(5) For purpose of appeal proceedings under this Section, a quorum shall consist of eight members of the Commission. The vote of the majority of the full Commission shall be necessary to affirm, reverse or modify such [illegible]cisions, order or other action rendered hereunder. Should a member of the Commission be designated under Section 12B.2(g)(1) of this Chapter, that Commissioner may not participate in an appeal under this Section except as a witness.

(6) The presiding officer of the Commission shall have the power to administer oaths to witnesses in appeals before the Commission under this Section. In the event that any person shall fail or refuse to appear as a witness in any such proceeding after being requested to do so, and if it shall appear to the Commission that his or her testimony, or books, records, documents or other things under his or her control are material and relevant as evidence in the matter under consideration by the Commission in the proceeding, the presiding officer of the Commission may subpoena such person, requiring his or her presence at the proceeding, and requiring him or her to bring such books, records, documents or other things under his or her control.

(7) All appeals to the Commission shall be open to the public. Records and minutes shall be kept of such proceedings and shall be open to public inspection. Upon reaching a decision in any appeal, the Commission shall give written notice thereof to the Director or other official designated by the Commission, and the appellant or appellants. The decision of the Commission shall be final unless within 15 days of the filing and service of written notice thereof appropriate legal proceedings are filed in a court of competent jurisdiction by any party to the contract, property contract or subcontract.

(8) If any contractor or subcontractor shall fail to appear at an appeal proceeding of the Commission after having been given written notice to appear, such failure to appear shall be grounds for termination of the contract, property contract or subcontract and such contractor or subcontractor shall be deemed to have forfeited all rights, benefits and privileges thereunder.

(9) The Commission shall promulgate rules and regulations for the implementation of the nondiscrimination provisions of this Chapter.

(h) The awarding authority may deduct from the amount payable to the contractor or subcontractor by the City under any contract or property contract subject to this Chapter, or may impose upon the contractor or subcontractor, a penalty of $50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Chapter. In addition to any other penalties provided for the violation of the nondiscrimination provisions of this Chapter or for the failure of any contractor or subcontractor to abide by the rules and regulations of the Commission, the contract, property contract or subcontract may be terminated or suspended, in whole or in part, by the awarding authority upon the basis of a finding as set forth in Section 12B.2(g) that the contractor has discriminated contrary to the provisions of this Chapter, and all moneys due or to become due hereunder may be forfeited to, and retained by, the City.

(i) A breach of the nondiscrimination provisions in the performance of a contract, property contract or subcontract shall be deemed by the City to be material breach of contract and the basis for determination by the awarding authority that the contractor or subcontractor is an irresponsible bidder as to all future contracts or property contracts for which such contractor or subcontractor may submit bids. Such contractor or subcontractor shall not for a period of up to two years thereafter, or until it shall establish and carry out a program in conformity with the nondiscrimination provisions of this Chapter, be allowed to act as a contractor or subcontractor under any contract or property contract.

(j) Nothing contained in this Chapter shall be construed in any manner so as to prevent the City from pursuing any other remedies that may be available at law, equity or under any contract or property contract.

(k) The contractor or subcontractor will meet the following standards for compliance:

(1) If the contractor or subcontractor has been held to be an irresponsible bidder under Section 12B.2(i) hereof, the contractor or subcontractor shall furnish evidence that it has established and is carrying out a program in conformity with the nondiscrimination provisions of this Chapter.

(2) The contractor or subcontractor may be required to file with the Commission a basic compliance report, which may be a copy of the federal EEO-1, or a more detailed report as determined by the Commission. Wilful false statements made in such reports shall be punishable as provided by law. No contractor or subcontractor shall be held in noncompliance for not filing such a report with the Commission unless it has been specifically required to do so in writing by the Commission.

(3) Personally, or through its representatives, the contractor or subcontractor shall, through negotiations with the unions with whom it has collective bargaining or other agreements requiring the contractor or subcontractor to obtain or clear its employees through the union, or when the contractor or subcontractor otherwise uses a union as an employment resource, attempt to develop an agreement which will:

(A) Define and outline responsibilities for nondiscrimination in hiring, referral, upgrading and training;

(B) Otherwise implement a nondiscrimination program in terms of the unions' specific areas of skill and geography, such as an apprenticeship program, to the end that minority workers will be available and given an equal opportunity for employment.

(4) The contractor or subcontractor shall notify the awarding authority of opposition to the nondiscrimination provisions of a contract by individuals, firms or organizations during the term of the contract. (Amended by Ord. 489-86, App. 12/18/86; Ord. 84-87, App. 3/20/87; Ord. 433-94, App. 12/30/94; Ord. 215-96, App. 5/30/96; Ord. 440-96, App. 11/8/96; Ord. 481-96, App. 12/20/96; Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97; Ord. 255-99, File No. 991146, App. 10/8/99; Ord. 101-00, File No. 000476, App. 5/26/2000)

## SEC. 12B.3. HUMAN RIGHTS COMMISSION EMPOWERED.

The San Francisco Human Rights Commission, its presiding officer and its director are hereby granted the power to do all acts and exercise all powers referred to in Section 12B.2 hereof. (Added by Ord. 261-66, App. 10/21/66)

## SEC. 12B.4. NONDISCRIMINATION GUIDELINES.

The following nondiscrimination guidelines shall apply to all contracts and property contracts subject to this Chapter.

In order to be eligible to submit a bid or proposal or to have a bid or proposal considered by the awarding authority, the prospective contractor shall agree to abide by a nondiscrimination program which conforms to the requirements of the Commission.

The Commission may also require contractors and subcontractors to take part in a pre-bid or pre-award conference in order to develop, improve or implement a qualifying nondiscrimination program.

(a) Nondiscrimination programs developed pursuant to this Section shall be effective for a period of 12 months from the date of approval by the Commission. Contractors or subcontractors who are members in good standing of a trade association which has negotiated a nondiscrimination program with the Commission may make this association program their commitment for the specific contract or property contract upon approval of the Commission without the process of a separate pre-bid or pre-award conference. Such an association agreement shall be effective for a period of 12 months from the date of approval by the Commission. Trade associations shall provide the Commission with a list of members in good standing in such association. The Commission shall annually supply contracting agencies of the City and County with a list of contractors and subcontractors who have developed approved nondiscrimination programs.

(b) The awarding authority shall be responsible for notifying all prospective bidders or proposers of the requirements of this Section and, when requested by the Commission, for notifying the Commission of each contract or property contract which is being proposed to be put to public bid.

(c) The proposed nondiscrimination program described by this Section, and the pre-bid or pre-award conference which may be required by the Commission, shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

(1) Apprenticeship where approved programs are functioning, and other on-the-job training for nonapprenticeable occupations;

(2) Classroom preparation for the job when not apprenticeable;

(3) Pre-apprenticeship education and preparation;

(4) Upgrading training and opportunities;

(5) Encouraging the use of contractors and subcontractors of all ethnic groups, provided, however, that any contract or property contract subject to this Chapter shall require the contractor or subcontractor to provide not less than the prevailing wage, working conditions, and practices generally observed in private industries in the City for such work; and

(6) The entry of qualified minority journeypersons into the industry.

(d) Nondiscrimination agreements resulting from the proposed nondiscrimination programs or the pre-bid or pre-award conferences shall not be confidential and may be publicized by the Commission at its discretion. In addition, the Commission may report to the Board of Supervisors, either on request of the Board or on its own initiative, on the progress or the problems which attend the implementation of these agreements or any other aspect of enforcement of this Chapter.

(e) Any job training or education program using the funds, facilities, or staff of the City which, in the judgment of the Board of Supervisors or the Commission, can make a contribution to the implementation of this Chapter shall submit reports to the Commission as requested and shall be required to cooperate with the contractors, subcontractors and unions and with the Commission for the effectuation of the nondiscrimination programs developed under this Chapter. (Amended by Ord. 498-75, App. 1/5/75; Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97)

## SEC. 12B.5. CHAPTER APPLIES ONLY TO DISCRIMINATORY EMPLOYMENT PRACTICES.

(a) This Chapter shall not confer upon the City and County of San Francisco or any agency, board or commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors or subcontractors engaged in the performance of City and County contracts or property contracts.

(b) The Board of Supervisors shall appropriate such funds from the General Fund of the City, subject to budgetary and fiscal provisions of the Charter, as it may deem necessary for the enforcement of this Chapter. (Amended by Ord. 340-68, App. 12/6/68; Ord. 201-97, App. 5/27/97)

## SEC. 12B.5-1. NONAPPLICABILITY, EXCEPTIONS AND WAIVERS.

(a) The Director shall waive the requirements of this Chapter under the following circumstances:

(1) Whenever the Director finds, upon the advice of the awarding authority, that there is only one prospective contractor willing to enter into a property contract with the City for use of City property on the terms and conditions established by the City, or that the needed goods, services, construction services for a public work or improvement, or interest in or right to use real property are available only from a sole source and the prospective contractor is not currently disqualified from doing business with the City, or from doing business with any governmental agency based on any contract compliance requirements;

(2) If the contracting department, board or commission certifies in writing to the Director that pursuant to Administrative Code Sections 6.30 or 21.25 the contract or property contract is necessary to respond to an emergency which endangers the public health or safety and no entity which complies with the requirements of this Chapter capable of responding to the emergency is immediately available; provided that such certification must be made prior to the Controller's contract certification;

(3) Where the City Attorney certifies in writing to the Director that the contract involves specialized litigation requirements such that it would be in the best interests of the City to waive the requirements of this Chapter.

(b) This Chapter shall not apply where the prospective contractor is a public entity and the Director finds that goods, services, construction services for a public work or improvement or interest in or right to use real property of comparable quality or accessibility as are available under the proposed contract or property contract are not available from another source, or that the proposed contract or property contract is necessary to serve a substantial public interest.

(c) This Chapter shall not apply where the contracting officer finds that the requirements of this Chapter will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement, provided that the contracting officer has made a good faith attempt to change the terms or conditions of any such grant, subvention or agreement to authorize application of this Chapter.

(d) Upon the request of a potential contractor or upon the contracting officer's own initiative, after taking all reasonable measures to find an entity that complies with the law, the contracting officer may waive any or all of the requirements of this Chapter for any contract, property contract or bid package advertised and made available to the public, or any competitive or sealed bids received by the City as of the date of the enactment of this ordinance under the following circumstances:

(1) Where the contracting officer determines that there are no qualified responsive bidders or prospective ntractors who could be certified by the Commission as being in compliance with the requirements of this [illegible]er and that the contract or property contract is for goods, a service or a project that is essential to the City or [illegible]esidents; or

(2) Where the contracting officer determines that transactions entered into pursuant to bulk purchasing rangements through federal, State or regional entities which actually reduce the City's purchasing costs would : in the best interests of the City; or

(3) Where the contracting officer determines that the requirements of this Chapter would result in the City's ntering into a contract with an entity that was set up, or is being used, for the purpose of evading the intent of this hapter, which is to prohibit the City from entering into contracts with entities that discriminate based on the riteria set forth in this Chapter;

(4) The waiver authority granted to contracting officers in this Section 12B.5-1(d) shall be subject to the equirements that:

(i) All proposed waivers must be submitted to the Director and the Clerk of the Board of Supervisors. All roposed waivers must set forth the reasons the contracting officer is requesting the waiver, what steps were taken o find an entity that complies with this Chapter and why the waiver does not defeat the intent of this Chapter, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Chapter. Such waivers shall be subject to the prior approval of the Director, who shall take action approving or denying a proposed waiver within 30 days of receiving a notification of a proposed waiver from a contracting officer. If after 30 days the Director has taken no action on the proposed waiver, the waiver shall be deemed approved. The Clerk of the Board of Supervisors shall list the notice of the proposed waiver at the rear of the next available Board agenda, and

(ii) Contracting officers report to the Director whenever such a waiver is granted within five days of granting the waiver, and

(iii) For any contract subject to approval by the Board, the contracting officer shall state in the approving resolution whether any waiver under this Section 12B.5-1(d) has been or is proposed to be granted for that contract, and

(iv) The Director shall conduct quarterly comprehensive reviews of the use of the waiver authority by departments and shall make a report to the Board of Supervisors. Contracting officers who have exercised waiver authority under this Section 12B.5-1(d) in the previous quarter must appear before a Board of Supervisors committee and report on their use of such waiver authority. If the Board finds abuse of waiver authority by a department under this Section 12B.5-1(d), either as a result of a report of the Director or upon its own initiative, the Board may by resolution transfer that waiver authority for that department to the Director,. to be exercised by the Director upon recommendation of the contracting officer under any or all of the circumstances enumerated in this Section 12B.5-1(d);

(5) Nothing in this Section 12B.5-1(d) shall limit the right of the Board of Supervisors to waive the provisions of this Chapter.

(e) This Chapter shall not apply to (i) the investment of trust moneys or agreements relating to the management of trust assets, (ii) City moneys invested in U.S. government securities or under pre-existing investment agreements, or (iii) the investment of City moneys where the Treasurer finds that:

(1) No person, entity or financial institution doing business in the City and County which is in compliance with this Chapter is capable of performing the desired transactions(s); or

(2) The City will incur a financial loss which in the opinion of the Treasurer would violate his or her fiduciary duties.

This subparagraph (e) shall be subject to the requirement that City moneys shall be withdrawn or divested at the earliest possible maturity date if deposited or invested with a person, entity or financial institution other than the U.S. government which does not comply with this Chapter.

(f) The General Manager of the Public Utilities Commission may waive the requirements of this Chapter where the contractor is providing wholesale or bulk water, power or natural gas, the conveyance or transmission of same, or ancillary services such as spinning reserve, voltage control, or loading scheduling, as required for assuring reliable services in accordance with good utility practice, to or on behalf of the San Francisco Public Utilities Commission; provided that the purchase of same may not practically be accomplished through the City's standard competitive bidding procedures; and further provided that this exemption shall not apply to contractors or franchisees providing direct, retail services to end users within the City and County of San Francisco.

(g) Sections 12B.1(b) and 12B.2(b) shall not apply to any contracts or property contracts executed or amended prior to June 1, 1997, or to bid packages advertised and made available to the public, or any competitive or sealed bids received by the City, prior to June 1, 1997, unless and until such contracts or property contracts are amended after June 1, 1997, and would otherwise be subject to this Chapter. (Added by Ord. 481-96, App. 12/20/96; amended by Ord. 401-97, App. 5/27/97; Ord. 286-97, App. 7/18/97; Ord. 431-97, App. 11/21/97)

## SEC. 12B.6. SEVERABILITY.

This Chapter shall be construed so as not to conflict with applicable federal or State laws, rules or regulations. Nothing in this Chapter shall authorize any City agency to impose any duties or obligations in conflict with limitations on municipal authority established by federal law at the time such agency action is taken.

In the event that a court or agency of competent jurisdiction holds that the State or federal law, rule or regulation invalidates any clause, sentence, paragraph or section of this Chapter or the application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the court or agency sever such clause, sentence, paragraph or section so that the remainder of this Chapter shall remain in effect. (Amended by Ord. 261-66, App. 10/21/66; Ord. 286-97, App. 7/18/97)

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# CHAPTER 12C
# NONDISCRIMINATION IN PROPERTY CONTRACTS

Sec. 12C.1. All Contracts and Property Contracts to Include Nondiscrimination Provisions.
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Sec. 12C.6. Severability.

## SEC. 12C.1. ALL CONTRACTS AND PROPERTY CONTRACTS TO INCLUDE NONDISCRIMINATION PROVISIONS.

(a) All contracting agencies of the City, or any department thereof, acting for or on behalf of the City and County, shall include in all contracts and property contracts a provision obligating the contractor not to discriminate on the basis of the fact or perception of that person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome, HIV status (AIDS/HIV status), weight, height, association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, operated by that contractor, and shall require such contractor to include a similar provision in all subcontracts.

(b) The requirements of this Chapter shall apply to (i) any of a contractor's operations within San Francisco; (ii) a contractor's operations on real property outside of San Francisco owned by the City or which the City has a right to occupy if the contractor's presence at that location is connected to as contract or property contract with the City; (iii) where the work is being performed by a contractor for the City within the United States; and (iv) any of a contractor's operations elsewhere within the United States. (Amended by Ord. 489-86, App. 12/18/86; Ord. 433-94, App. 12/30/94; Ord. 440-96, App. 11/8/96; Ord. 481-96, App. 12/20/96; Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97; Ord. 255-99, File No. 991146, App. 10/8/99; Ord. 101-00, File No. 000476, App. 5/26/2000)

## SEC. 12C.2. DEFINITIONS.

As used in this Chapter the term:

"Age" for the purpose of membership refers to the age of any person who has attained the age of 18 years, except for bona fide senior citizen organizations.

"City" shall mean the City and County of San Francisco.

"Commission" shall mean the Human Rights Commission of the City and County of San Francisco.

"Contract" shall mean an agreement for public works or improvements to be performed, or grants to be provided, or for goods or services to be purchased, at the expense of the City and County or to be paid out of moneys deposited in the treasury or out of trust moneys under the control or collected by the City and County, and does not include property contracts, agreements entered into pursuant to settlement of legal proceedings, or contracts for a cumulative amount of $5,000 or less per vendor in each fiscal year.

"Contractor" means any person or persons, firm, partnership, corporation, or combination thereof, who enters into a contract or property contract with a department head or officer empowered by law to enter into contracts or property contracts on the part of the City and County.

"Director" shall mean the Director of the Human Rights Commission.

"Disability" is a physical or mental impairment which substantially limits one or more major life activities, or a record of such an impairment.

"Domestic partner" shall mean any person who has a currently registered domestic partnership with a governmental body pursuant to State or local law authorizing such registration.

"Gender identity" shall mean a person's various individual attributes as they are understood to be masculine and/or feminine.

"Property contract" shall mean a written agreement for the exclusive use or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements. For the purposes of this Chapter, "exclusive use" means the right to use or occupy real property to the exclusion of others, other than the rights reserved by the fee owner. "Property contract" shall not include a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit, except that "property contract" shall include such permits granted to a private entity for the use of City property for the purpose of a for-profit activity. "Property contract" shall also not include street excavation, street construction or street use permits, agreements for the use of City right-of-way where a contracting utility has the power of eminent domain, or agreements governing the use of City property which constitutes a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally recognized as protected by the First Amendment to the U.S. Constitution, or which are primarily recreational in nature.

"Qualified disabled employee" shall mean a person able to perform the essential functions of a job with reasonable accommodation.

"Sex" shall mean the character of being male or female.

"Sexual orientation" shall mean the status of being lesbian, gay, bisexual or heterosexual.

"Subcontract" shall mean an agreement to (i) provide goods and/or services, including construction labor, materials or equipment, to a contractor, if such goods or services are procured or used in the fulfillment of the contractor's obligations arising from a contract with the City, (ii) to transfer the right to occupy or use all or a portion of a real property interest subject to a property contract to a subcontractor and pursuant to which the contractor remains obligated under the property contract.

"Subcontractor" means any person or persons, firm, partnership, corporation or any combination thereof, who enters into a subcontract with a contractor. Such term shall include any person or entity who enters into an agreement with any subcontractor for the performance of 10 percent or more of any subcontract. (Amended by Ord. 489-86, App. 12/18/86; Ord. 433-94, App. 12/30/94; Ord. 440-96, App. 11/8/96; Ord. 481-96, App. 12/20/96; Ord. 201-97, App. 5/27/97)

## SEC. 12C.3. NONDISCRIMINATION PROVISIONS.

Every contract and property contract entered into by any agency of the City shall incorporate by reference and require contractor to comply with the nondiscrimination provisions of Section 12C.3. In addition, all contractors must incorporate by reference in all subcontracts and require subcontractors to comply with the requirements of this Section 12C.3, and failure to do so shall constitute a material breach of contract.

In the performance of a contract, the contractor or subcontractor shall agree as follows:

(a) The contractor or subcontractor will not discriminate against any person seeking accommodations, advantages, facilities, privileges, services, or membership in the business, social or other establishment or organization operated by the contractor or subcontractor on the basis of the fact or perception of that person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, AIDS/HIV status, weight, height, association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter. Services provided by contractor or subcontractor to the public shall be provided regardless of disability of persons otherwise entitled to or qualified for such services:

(b) Should the contractor or subcontractor operate as a membership organization, the contractor or subcontractor will permit access to its membership records, rules, regulations and other pertinent data, by the City's awarding authority, or the Commission, for the purpose of investigating to ascertain compliance with the nondiscrimination provisions of this Chapter, and on request provide evidence that the contractor or subcontractor has complied or will comply with the nondiscrimination provisions of this Chapter. The Director shall be the final arbiter of a contractor's or subcontractor's compliance or substantial compliance with this Chapter and the Director's determination shall not be appealable to the Commission.

(c) A contractor or subcontractor shall be deemed to have breached the nondiscrimination provisions of this Chapter upon:

(1) A finding by the Director or such other official who may be designated by the Commission, that contractor or subcontractor has wilfully violated such nondiscrimination provisions.
(2) Upon such finding by the Director or other official designated by the Commission, the awarding authority shall notify the contractor or subcontractor that unless the contractor or subcontractor demonstrates to the satisfaction of the Director or other official designated by the Commission within such reasonable period as the Commission shall determine, that the violation has been corrected, action will be taken as set forth in Section 12C.3(d) and/or Section 12C.3(g).
(3) The Commission shall, within 10 days of the date of issuance of any findings by the Director or other official designated by the Commission for the enforcement of this Chapter, mail to any person or persons affected by said finding, a copy of said finding, together with written notice of the right to appeal such finding. Notice of appeal must be filed in writing with the Chairperson of the Commission within 20 days of the date of mailing said copy and notice.
(4) For purposes of appeal proceedings under this Section, a quorum shall consist of eight members of the Commission. The vote of the majority of the full Commission shall be necessary to affirm, reverse or modify such decisions, order or other action rendered hereunder. Should a member of the Commission be designated under Section 12C.3(c)(1) of this Chapter, that Commissioner may not participate in an appeal under this Section except as a witness.
(5) The presiding officer of the Commission shall have the power to administer oaths to witnesses in appeals before the Commission under this Section. In the event that any person shall fail or refuse to appear as a witness in any such proceeding after being requested to do so, and if it shall appear to the Commission that his or her testimony, or books, records, documents or other things under his or her control are material and relevant as evidence in the matter under consideration by the Commission in the proceeding, the presiding officer of the Commission may subpoena such person, requiring his or her presence at the proceeding and requiring him or her to bring such books, records, documents or other things under his or her control.
(6) All appeals to the Commission shall be open to the public. Records and minutes shall be kept of such proceedings and shall be open to public inspection. Upon reaching a decision in any appeal, the Commission shall give written notice thereof to the Director or other official designated by the Commission, and the appellant or appellants. The decision of the Commission shall be final unless within 15 days of the filing and service of written notice thereof appropriate legal proceedings are filed in a court of competent jurisdiction by any party to the contract, property contract or subcontract.
(7) If any contractor or subcontractor shall fail to appear at an appeal proceeding of the Commission after having been given written notice to appear, such failure to appear shall be grounds for termination of the contract, property contract or subcontract and such contractor or subcontractor shall be deemed to have forfeited all rights, benefits and privileges thereunder.
(8) The Commission shall promulgate rules and regulations for the implementation of the nondiscrimination provisions of this Chapter.
(d) A breach of the nondiscrimination provisions in the performance of a contract, property contract or subcontract shall be deemed by the City to be a material breach of contract and the basis for determination by the awarding authority that the contractor or subcontractor is an irresponsible contractor or subcontractor as to all future contracts or property contracts for which such contractor or subcontractor may submit bids. Such contractor or subcontractor shall not, for a period of up to two years thereafter, or until it shall establish and carry out a program in conformity with the nondiscrimination provisions of this Chapter, be allowed to act as a contractor or subcontractor under any contract or property contract.
(e) Nothing contained in this Chapter shall be construed in any manner so as to prevent the City from pursuing any other remedies that may be available at law, equity or under any contract or property contract.
(f) The contractor or subcontractor will meet the following standards for compliance:
(1) If the contractor or subcontractor has been held to be irresponsible under Section 12C.3(d) hereof, the contractor or subcontractor shall furnish evidence that it has established and is carrying out a program in conformity with the nondiscrimination provisions of this Chapter.
(2) The contractor or subcontractor may be required to file with the Commission a basic compliance report. Wilful false statements made in such reports shall be punishable as provided by law. No contractor or subcontractor shall be held in noncompliance for not filing such a report with the Commission unless it has been specifically required to do so in writing by the Commission.
(g) The awarding authority may deduct from the amount payable to the contractor or subcontractor by the City under any contract or property contract subject to this Chapter, or may impose upon the contractor or subcontractor, a penalty of $50 for each person for each calendar day during which such person was discriminated against in

violation of the provisions of this Chapter. In addition to any other penalties provided for the violation of the nondiscrimination provisions of this Chapter or for the failure of any contractor or subcontractor to abide by the rules and regulations of the Commission, the contract, property contract or subcontract may be terminated or suspended, in whole or in part, by the awarding authority upon the basis of a finding as set forth in Section 12C.3(d) that the contractor or subcontractor has discriminated contrary to the provisions of this Chapter, and all moneys due or to become due hereunder may be forfeited to, and retained by, the City. (Amended by Ord. 489-86, App. 12/18/86; Ord. 433-94, App. 12/30/94; Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97; Ord. 255-99, File No. 991146, App. 10/8/99; Ord. 101-00, File No. 000476, App. 5/26/2000)

## SEC. 12C.4. HUMAN RIGHTS COMMISSION EMPOWERED.

The San Francisco Human Rights Commission, its presiding officer and its director are hereby granted the power to do all acts and exercise all powers referred to in Section 12C.3 thereof. (Amended by Ord. 84-77, App. 3/11/77)

## SEC. 12C.5. FUNDING.

The Board of Supervisors shall appropriate such funds from the General Fund of the City and County of San Francisco, subject to budgetary and fiscal provisions of the Charter, as it may deem necessary for enforcement of this ordinance. (Amended by Ord. 84-77, App. 3/11/77)

## SEC. 12C.5-1. NONAPPLICABILITY, EXCEPTIONS AND WAIVERS.

(a) The Director shall waive the requirements of this Chapter under the following circumstances:
(1) Whenever the Director finds, upon the advice of the awarding authority, that there is only one prospective contractor willing to enter into a property contract with the City for use of City property on the terms and conditions established by the City, or that the needed goods, services, construction services for a public work or improvement, or interest in or right to use real property are available only from a sole source, and the prospective contractor is not currently disqualified from doing business with the City, or from doing business with any governmental agency based on any contract compliance requirements;
(2) If the contracting department or commission certifies in writing to the Director that pursuant to Administrative Code Section 6.30 or 21.25 the contract or property contract is necessary to respond to an emergency which endangers the public health or safety and no entity which complies with the requirements of this Chapter capable of responding to the emergency is immediately available; provided that such certification must be made prior to the Controller's contract certification;
(3) Where the City Attorney certifies in writing to the Director that the contract involves specialized litigation requirements such that it would be in the best interests of the City to waive the requirements of this Chapter.
(b) This Chapter shall not apply where the prospective contractor is a public entity and the Director finds that goods, services, construction services for a public work or improvement or interest in or right to use real property of comparable quality or accessibility as are available under the proposed contract or property contract are not available from another source, or that the proposed contract or property contract is necessary to serve a substantial public interest.
(c) This Chapter shall not apply where the contracting officer finds that the requirements of this Chapter will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement, provided that the contracting officer has made a good faith attempt to change the terms or conditions of any such grant, subvention or agreement to authorize application of this Chapter.
(d) Upon the request of a potential contractor or upon the contracting officer's own initiative, after taking all reasonable measures to find an entity that complies with the law, the contracting officer may waive any or all of the requirements of this Chapter for any contract, property contract or bid package advertised and made available to the public, or any competitive or sealed bids received by the City as of the date of the enactment of this ordinance under the following circumstances:
(1) Where the contracting officer determines that there are no qualified responsive bidders or prospective contractors who could be certified by the Commission as being in compliance with the requirements of this Chapter and that the contract or property contract is for goods, a service or a project that is essential to the City or City residents; or

2) Where the contracting officer determines that transactions entered into pursuant to bulk purchasing arrangements through federal, State or regional entities which actually reduce the City's purchasing costs would be in the best interests of the City; or

(3) Where the contracting officer determines that the requirements of this Chapter would result in the City's entering into a contract with an entity that was set up, or is being used, for the purpose of evading the intent of this Chapter, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Chapter;

(4) The waiver authority granted to contracting officers in this Section 12C.5-1(d) shall be subject to the requirements that:

(i) All proposed waivers must be submitted to the Director and the Clerk of the Board of Supervisors. All proposed waivers must set forth the reasons the contracting officer is requesting the waiver, what steps were taken to find an entity that complies with this Chapter and why the waiver does not defeat the intent of this Chapter, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Chapter. Such waivers shall be subject to the prior approval of the Director, who shall take action approving or denying a proposed waiver within 30 days of receiving a notification of a proposed waiver from a contracting officer. If after 30 days the Director has taken no action on the proposed waiver, the waiver shall be deemed approved. The Clerk of the Board of Supervisors shall list the notice of the proposed waiver at the rear of the next available Board agenda, and

(ii) Contracting officers report to the Director whenever such a waiver is granted within five days of granting the waiver, and

(iii) For any contract subject to approval by the Board, the contracting officer shall state in the approving resolution whether any waiver under this Section 12C.5-1(d) has been or is proposed to be granted for that contract, and

(iv) The Director shall conduct quarterly comprehensive reviews of the use of the waiver authority by departments and shall make a report to the Board of Supervisors. Contracting officers who have exercised waiver authority under this Section 12C.5-1(d) in the previous quarter must appear before a Board of Supervisors committee and report on their use of such waiver authority. If the Board finds abuse of waiver authority by a department under this Section 12C.5-1(d), either as a result of a report of the Director or upon its own initiative, the Board may by resolution transfer that waiver authority for that department to the Director, to be exercised by the Director upon recommendation of the contracting officer under any or all of the circumstances enumerated in this Section 12C.5-1(d);

(5) Nothing in this Section 12C.5-1(d) shall limit the right of the Board of Supervisors to waive the provisions of this Chapter.

(e) This Chapter shall not apply to (i) the investment of trust moneys or agreements relating to the management of trust assets, (ii) City moneys invested in U.S. government securities or under pre-existing investment agreements, or (iii) the investment of City moneys where the Treasurer finds that:

(1) No person, entity or financial institution doing business in the City and County which is in compliance with this Chapter is capable of performing the desired transactions(s); or

(2) The City will incur a financial loss which in the opinion of the Treasurer would violate his or her fiduciary duties.

This subparagraph (e) shall be subject to the requirement that City moneys shall be withdrawn or divested at the earliest possible maturity date if deposited or invested with a person, entity or financial institution other than the U.S. government which does not comply with this Chapter.

(f) The General Manager of the Public Utilities Commission may waive the requirements of this Chapter where the contractor is providing wholesale or bulk water, power or natural gas, the conveyance or transmission of same, or ancillary services such as spinning reserve, voltage control, or loading scheduling, as required for assuring reliable services in accordance with good utility practice, to or on behalf of the San Francisco Public Utilities Commission; provided that the purchase of same may not practically be accomplished through the City's standard competitive bidding procedures; and further provided that this exemption shall not apply to contractors or franchisees providing direct, retail services to end users within the City and County of San Francisco. (Added by Ord. 481-96, App. 12/20/96; amended by Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97; Ord. 431-97, App. 11/21/97)

## SEC. 12C.6. SEVERABILITY.

This Chapter shall be construed so as not to conflict with applicable federal or State laws, rules or regulations. Nothing in this Chapter shall authorize any City agency to impose any duties or obligations in conflict with limitations on municipal authority established by federal law at the time such agency action is taken.

In the event that a court or agency of competent jurisdiction holds that the State or federal law, rule or regulation invalidates any clause, sentence, paragraph or section of this Chapter or the application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the court or agency sever such clause, sentence, paragraph or section so that the remainder of this Chapter shall remain in effect. (Amended by Ord. 84-77, App. 3/11/77; Ord. 286-97, App. 7/18/97)

# CHAPTER 12F
# IMPLEMENTING THE MACBRIDE PRINCIPLES - NORTHERN IRELAND

ec. 12F.1. Intent.
ec. 12F.2. Findings.
ec. 12F.3. The MacBride Principles.
ec. 12F.4. Retirement Board and System.
Sec. 12F.5. City Contracts.
Sec. 12F.6. Research and Education.
Sec. 12F.7. Severability.

## SEC. 12F.1. INTENT.

This ordinance is set forth in order to accomplish the following objectives:

(a) To declare the City and County of San Francisco's opposition to any form of religious discrimination.

(b) To influence any discriminatory practices of American corporations doing business in Northern Ireland.

(c) To support efforts to effect peaceful change with regard to the situation in Northern Ireland by means that are prudent and responsible.

(d) To send legislation to the government of the United Kingdom stating that the people of San Francisco oppose religious discrimination and encouraging the government of the United Kingdom to take more pro-active measures in support of affirmative action.

(e) To express the support of the Board of Supervisors of the City and County of San Francisco for the implementation of the MacBride Principles by companies from the United States who conduct business in Northern Ireland. (Added by Ord. 107-89, App. 4/7/89)

## SEC. 12F.2. FINDINGS.

The Board of Supervisors hereby makes the following findings:

(a) The people of the City and County of San Francisco recognize the moral responsibility of communities to continually take political steps toward insuring that full human rights are obtained for all people and that religious discrimination is abolished.

(b) Northern Ireland is a sectarian state in which the rights of the Irish Catholic minority citizens have been severely restricted, particularly in terms of equal employment opportunities. The result of this religious discrimination has been an unemployment rate for Catholics which is more than twice that of the majority Protestants.

(c) The internationally recognized MacBride Principles are aimed at reducing employment discrimination in companies doing business in Northern Ireland, currently 26 of which are American firms. These MacBride Principles have been formally adopted by numerous state and local governments, including the States of New York, Connecticut, New Jersey, Massachusetts, Rhode Island and the Cities of New York, Philadelphia, Worcester, Hartford, Cleveland, Detroit, Chicago, Providence and Wilmington.

(d) The MacBride Principles are authorized by Dr. Sean MacBride, distinguished Irish statesman, Nobel Peace Prize laureate and founder of Amnesty International.

(e) The City of San Francisco has a tradition of regulating the use of public monies to ensure that purchases, deposits and investments are made consistent with moral standards in a manner which promotes public welfare.

(f) In keeping with this tradition, the Board of Supervisors seeks, through City policy, to influence those who do business in Northern Ireland.

(g) This legislation should not be construed to discourage future investment in Northern Ireland.

(h) A peaceful solution of the troubles in Northern Ireland depends on elimination of discrimination. (Added by Ord. 107-89, App. 4/7/89)

## SEC. 12F.3. THE MACBRIDE PRINCIPLES.

The MacBride Principles call for affirmative action to be taken by institutions and companies doing business in Northern Ireland, by:

A. Increasing the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs.

A work force that is severely unbalanced may indicate prima facie that full equality of opportunity is not being afforded all segments of the community in Northern Ireland. Each signatory to the MacBride Principles must make every reasonable, lawful effort to increase the representation of underrepresented religious groups at all levels of its operations in Northern Ireland.

B. Providing adequate security for the protection of minority employees both at the workplace and while traveling to and from work.

While total security can be guaranteed nowhere today in Northern Ireland, each signatory to the MacBride Principles must make reasonable, good-faith efforts to protect workers against intimidation and physical abuse at the workplace. Signatories must also make reasonable, good-faith efforts to ensure that applicants are not deterred from seeking employment because of fear for personal safety at the workplace or while traveling to and from work.

C. Banning provocative or religious or political emblems from the workplace.

Each signatory to the MacBride Principles must make reasonable, good-faith efforts to prevent the display of provocative sectarian emblems at their plants in Northern Ireland.

D. Publicly advertising all job openings and making special recruitment efforts to attract applicants from underrepresented religious groups.

Signatories to the MacBride Principles must exert special efforts to attract employment applications from the sectarian community that is substantially underrepresented in the work force. This should not be construed to imply a diminution of opportunity for other applications.

E. Providing that layoff, recall and termination procedures should not, in practice, favor particular religious oups.

Each signatory to the MacBride Principles must make reasonable, good-faith efforts to ensure that layoff, ecall and termination procedures do not penalize a particular religious group disproportionately. Layoff and rmination practices that involve seniority solely can result in discrimination against a particular religious group the bulk of employees with greatest seniority are disproportionately from another religious group.

F. Abolishing job reservations, apprenticeship restrictions and differential employment criteria which iscriminate on the basis of religious or ethnic origin.

Signatories to the MacBride Principles must make reasonable, good-faith efforts to abolish all differential mployment criteria whose effect is discrimination on the basis of religion. For example, job reservations and pprenticeship regulations that favor relatives of current or former employees can, in practice, promote religious iscrimination if the company's work force has historically been disproportionately drawn from another religious group.

G. Developing training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of minority employees.

This does not imply that such programs should not be open to all members of the work force equally.

H. Establishing procedures to assess, identify and actively recruit minority employees with potential for further advancement.

This section does not imply that such procedures should not apply to all employees equally.

I. Appointing a senior management staff member to oversee the company's affirmative action efforts and the setting up of timetables to carry out affirmative action principles.

In addition to the above, each signatory to the MacBride Principles is required to report annually to an independent monitoring agency on its progress in the implementation of these principles. (Added by Ord. 107-89, App. 4/7/89)

## SEC. 12F.4. RETIREMENT BOARD AND SYSTEM.

The Retirement Board of the City and County of San Francisco is hereby commended for its efforts in support of the MacBride Principles (with the exception of Principle E, as listed in Section 12F.3 of this Code) and the addition of the Principles to the Social Investment Policy of the Retirement Board. The Retirement Board is encouraged to take further steps to support these Principles by moving to the next level of the Social Investment Procedures which will be to actively promote proxies which would conform with the policy position of the Retirement Board, and by encouraging businesses with whom it deals, and in whom it invests, likewise to support the MacBride Principles. (Added by Ord. 107-89, App. 4/7/89)

## SEC. 12F.5. CITY CONTRACTS.

All contracts entered into by a department head or officer empowered by law to enter into contracts on behalf of the City and County for public works or improvements to be performed, for a franchise, concession or lease of property, or for goods and services or supplies to be purchased at the expense of the City and County, or to be paid out of monies deposited in the Treasury or out of trust monies under the control or collected by the City and County, shall contain a statement urging companies doing business in Northern Ireland to move toward resolving employment inequities, and encouraging them to abide by the MacBride Principles. Each of these statements shall also urge San Francisco companies to do business with corporations that abide by the MacBride Principles. Above the signature line for use by contractors on each contract shall be placed an acknowledgment confirming that they have read and understood the City's statement urging companies doing business in Northern Ireland to move toward resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles. (Added by Ord. 107-89, App. 4/7/89)

## SEC. 12F.6. RESEARCH AND EDUCATION.

(a) The Board of Supervisors shall send, and the Mayor is asked to join in, a letter to all United States corporations listed by the Investment Responsibility Research Center as doing business in Northern Ireland. This letter shall state the City's support for the MacBride Principles and urge the corporations to abide by the Principles. The letter shall ask that each recipient company sign and return to the Clerk of the Board of Supervisors a statement agreeing to the Principles. Each letter will clearly state that the Board shall evaluate the issue further in one year, and may amend the City's policies regarding implementation of the MacBride Principles in light of the progress made with regard to the elimination of employment inequities in Northern Ireland.

(b) The Clerk of the Board shall report to the Board of Supervisors by July 1, 1989 and by January 1, 1990 on the letters that were sent as required in the immediately preceding paragraph, and on any responses received. The Controller shall report to the Board of Supervisors by July 1, 1989 and by January 1, 1990 on the number of companies with whom the City is doing business who are conducting business in Northern Ireland.

(c) The City Treasurer shall sent a statement to banks with whom the City has deposits and encourage them to do business with corporations that abide by the MacBride Principles.

(d) The Board of Supervisors, through the Clerk of the Board, shall send a letter to the government of the United Kingdom conveying a copy of this legislation and expressing opposition to religious discrimination. (Added by Ord. 107-89, App. 4/7/89)

## SEC. 12F.7. SEVERABILITY.

The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances. (Added by Ord. 107-89, App. 4/7/89)

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# CHAPTER 12I
# TROPICAL HARDWOOD AND VIRGIN REDWOOD BAN

Sec. 12I.1. Findings.
Sec. 12I.2. Definitions.
Sec. 12I.3. Contracts for Services.
Sec. 12I.4. Purchase or Other Acquisition of Commodities.
Sec. 12I.5. Contract Conditions.
Sec. 12I.6. Rules and Regulations.
Sec. 12I.7. Public Records.
Sec. 12I.8. Penalty.
Sec. 12I.9. [Reserved]
Sec. 12I.10. Implementation Reports.
Sec. 12I.11. Severability.

## EC. 12I.1. FINDINGS.

The Board of Supervisors hereby finds and declares that:

(1) The world's equatorial tropical rainforests are the Earth's oldest and richest terrestrial ecological systems. The tropical rainforests are home to half of all the Earth's plant and animal species as well as thousands of indigenous tribal peoples.

(2) The tropical rainforests are being destroyed worldwide, through commercial logging, burning and overcutting, at a rate of 50,000 acres per day, and this rate is accelerating.

(3) Over ¼ of all rainforest destruction results from logging of the rainforests to support the international trade in tropical hardwoods.

(4) The United States is the third largest importer of tropical hardwoods.

(5) Deforestation of the tropical rainforests has been scientifically linked to atmospheric imbalance and global warming, known as the Greenhouse Effect, caused by increased concentrations of $CO_2$ in the global atmosphere. The effects of global warming include drought, floods, melting of the polar ice caps and changes in weather patterns worldwide.

(6) Destruction of the rainforest at the current rate results in the endangerment and extinction of 30 species of plant and animal life each day and a consequent loss of genetic diversity invaluable to the production of medicines and food products.

(7) Tropical rainforest deforestation causes the displacement of indigenous tribal peoples, many of whom have never before been contacted by the modern world. Displacement results in the death of these people and destruction of their culture, and loss of their intimate knowledge of commercial, medicinal and nutritional uses of

rainforest species, which is often superior to that of any western-trained scientist.

(8) It is critical to the survival of the planet that the United States and other industrialized nations take immediate measures to curb consumption of tropical hardwoods in order to halt the deforestation of the rainforests and to avert irreversible global environmental destruction.

(9) Virgin redwood forests are an ancient and irreplaceable part of our State and national heritage that should be preserved for future generations.

(10) Virgin redwood forests provide the only surviving habitat for rare species such as the marbled murrelet and the northern spotted owl. In addition, these forests protect the streams that provide the increasingly rare habitat of dwindling numbers of salmon and steelhead.

(11) Only four percent of the virgin redwood forests originally found in the United States remain in existence, and these forests are under threat of destruction through commercial logging.

(12) Prohibiting the City and County's use of tropical hardwoods, tropical hardwood wood products, virgin redwood and virgin redwood wood products will contribute to a necessary reduction in the demand for these products. Such a prohibition would not create shortages of building supplies for the City, inasmuch as many acceptable non-tropical hardwood equivalents and non-virgin redwood equivalents are available.

(13) Many non-tropical hardwood equivalents are grown domestically in the United States. A prohibition on the City's use of tropical woods would therefore stimulate domestic business and create jobs for American timber workers.

(14) Under this Article the City and County of San Francisco wishes to exercise its power to make economic decisions involving its own funds as a participant in the marketplace and to conduct its own business as a municipal corporation to ensure that purchases and expenditures of public monies are made in a manner consistent with sound environmental policies and practices. The City enacts this Article to prohibit the use, requisition or purchase, directly or indirectly, by any City or County department or agency, of any tropical hardwoods or tropical hardwood wood products as well as virgin redwood or virgin redwood wood products. (Added by Ord. 391-90, App. 12/6/90; amended by Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001)

## SEC. 121.2. DEFINITIONS.

As used in this Article, the following words and phrases shall have the meanings indicated herein:

"City" or "City and County" shall mean the City and County of San Francisco, or any department, board, commission or agency thereof.

"City funds" shall mean all monies or other assets received and managed by, or which are otherwise under the control of, the Treasurer, and any notes, bonds, securities, certificates of indebtedness or other fiscal obligations issued by the City and County.

"Commodities" shall include, but not be limited to, goods, commodities, materials, supplies and equipment.

"Contract" shall mean an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City and County or to be paid out of monies deposited in the treasury or out of trust monies under the control of or collected by the City and County.

"Contracting officer" shall mean that officer or employee of the City and County authorized under the Charter, the Administrative Code or the Municipal Code, to enter into a contract on behalf of the City and County. "Contracting officer" shall include the Mayor, each department head or general manager and other employees of

City and County authorized to enter into contracts on behalf of the City and County.

ing business in the City and County" shall mean entering into or seeking to enter into a contract with the d County.

"Non-tropical hardwood equivalents" shall mean any and all hardwood other than virgin redwood that grows ny geographically temperate regions, as defined by the U.S. Forest Service, and is equivalent to tropical dwood in density, texture, grain, stability or durability. Non-tropical hardwoods, the use or purchase of which ll be preferred under this Article, shall include, but not be limited to the following species:

| entific Name | Common Name |
|---|---|
| xinus americana | Ash |
| lia americana | Basswood |
| gus grandifolia | Beech |
| etula papyrifera | Birch |
| iglans cinera | Butternut |
| runus serotina | Cherry |
| opulus spp. | Cottonwood |
| odium distichum | Cypress |
| seudotsuga menziesii | Douglas Fir |
| Ulmus spp. | Elm |
| Nyssa sylvatica | Black Gum |
| Liquidambar styraciflua | Red Gum |
| Celtis laevigata | Hackberry |
| Tsuga heterophylla | West Hemlock |
| Hicoria spp. | Hickory |
| Acer saccharum | Sugar Maple |
| Acer spp. | Soft Maple |
| Quercus spp. | Red Oak |
| Quercus spp. | White Oak |
| Hicoria spp. | Pecan |
| Pinus ponderosa | Ponderosa Pine |

| | |
|---|---|
| Pinus spp. | |
| Liriodendron tulipifera | Yellow Poplar |
| Picea sitchensis | Sitka Spruce |
| Platanus occidentalis | Sycamore |
| Juglas nigra | Black Walnut |

"Non-virgin redwood equivalents" shall mean any and all wood or wood product (including, but not limited to, wood from the species scientifically classified as "sequoia sempervirens") that is not a tropical hardwood or a tropical hardwood wood product and is equivalent to virgin redwood in density, texture, grain, stability or durability.

"Purchaser" shall mean the Purchaser of the City and County or any authorized representative of that official.

"Tropical hardwood" shall mean any and all hardwood, scientifically classified as angiosperme, that grows in any tropical moist forest. Tropical hardwoods, the use or purchase of which shall be governed by this Article, shall include, but not be limited to, the following species:

| Scientific Name | Common Name |
|---|---|
| Vouacapoua americana | Acapu |
| Pericopsis elata | Afrormosia |
| Shorea almon | Almon |
| Peltogyne spp. | Amaranth |
| Guibourtia ehie | Amazaque |
| Aningeria spp. | Aningeria |
| Dipterocarpus grandiflorus | Apitong |
| Ochrama lagopus | Balsa |
| Virola spp. | Banak |
| Anisoptera thurifera | Bella Rosa |
| Guibourtia arnoldiana | Benge |
| Detarium Senegalese | Boire |
| Guibourtia demeusil | Bubinga |
| Prioria copaifera | Cativo |
| Antiaris africana | Chenchen |

| | |
|---|---|
| bergia retusa | Concobolo |
| spp. | Cordia |
| ospyros spp. | Ebony |
| coumea klaineanal | Gaboon |
| lorophora excelsa | Iroko |
| acia koa | Koa |
| erygota macrocarpa | Koto |
| horea negrosensis | Red Lauan |
| entacme contorta | White Lauan |
| horea polysperma | Tanguile |
| erminalia superba | Limba |
| niba duckei | Louro |
| Khaya ivorensis | African Mahogany |
| ietenia macrophylla | American Mahogany |
| Tieghemella heckelii | Makore |
| Distemonanthusb benthamianus | Movingui |
| Pterocarpus soyauxii | African Paduak |
| Pterocarpus angolensis | Angola Paduak |
| Aspidosperma spp. | Peroba |
| Peltogyne spp. | Purpleheart |
| Gonystylus spp. | Ramin |
| Dalbergia spp. | Rosewood |
| Entandrophragma cylindricum | Sapele |
| Shorea philippinensis | Sonora |
| Tectona grandis | Teak |
| Lovoa trichilioides | Tigerwood |

Milletia laurentii Wenge

Microberlinia brazzavillensis Zebrawood

"Tropical rainforests" shall mean any and all forests classified by the scientific term "tropical moist forests," the classification determined by the equatorial region of the forest and average rainfall.

"Tropical hardwood wood products" shall refer to any wood products which are composed, in whole or in part, of tropical hardwood.

"Virgin redwood wood products" shall refer to any wood products which are composed, in whole or in part, of virgin redwood.

"Virgin redwood" shall mean wood from the species scientifically classified as "sequoia sempervirens" including but not limited to wood that is graded "clear heart" or "clear all heart" (or any successor or equivalent terms) under lumber industry grading standards, unless such wood is either:

(a) Reclaimed or recycled; or

(b) Certified as sustainably harvested redwood by a certification organization that bases its standards on the principles and criteria of the United States Forest Stewardship Council.

"Wood products" shall refer to any wood products, wholesale or retail, in any form, including but not limited to veneer, plywood, furniture, cabinets, paneling, mouldings, doorskins, joinery, or sawnwood. As used herein, the following words and phrases shall have the meanings indicated herein:

(1) "Doorskin" shall mean a thin sheet of wood which is glued onto the frame of a door to form the face of the door.

(2) "Moulding" shall refer to decorative wood used around window and doorframes, ceilings, and corners.

(3) "Paneling" shall mean any thin sheet or sheets of attractive wood, intended to be used as wall covering, including any sheet consisting of a veneer glued onto some backing material.

(4) "Particle board" shall mean any wood sheet or board created by compressing wood chips and particles from logs, trees or industrial residue.

(5) "Plywood" shall mean any wood sheet created by gluing together thinner sheets (veneers) of any species.

(6) "Sawnwood" shall mean lumber or any form of wood which is sawn or chipped lengthwise in either a rough or smooth cut.

(7) "Veneer" shall mean a very thin slice of wood, between 1/16 inch to 1/125 inch in width, used in plywood, paneling, furniture exterior, and doorskins. (Added by Ord. 391-90, App. 12/6/90; amended by Ord. 278-96, App. 7/3/96; Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001)

## SEC. 12I.3. CONTRACTS FOR SERVICES.

(a) Prohibited Transactions.

(1) The City and County shall not enter into or renew any contract with any person or entity for the provision of services, the performance of which calls for the use of any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

(2) In the case of any bid proposal or solicitation, request for bid or proposal or contract for the construction any public work, building maintenance or improvement for or on behalf of the City and County, the City shall quire or permit the use of any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin ood wood product.

(3) Every bid proposal, solicitation, request for bid or proposal and contract for the construction of any ublic work, building maintenance or improvement shall contain a statement that any bid, proposal or other esponse to a solicitation for bid or proposal which proposes or calls for the use of any tropical hardwood, tropical ardwood wood product, virgin redwood or virgin redwood wood product in performance of the contract shall be eemed nonresponsive.

(b) Nonapplicability; Findings; Alternates.

(1) With respect to tropical hardwood and tropical hardwood wood products, Section 12I.3 shall not apply to id packages advertised and made available to the public or any competitive and sealed bids received by the City ntered into prior to December 6, 1990. With respect to virgin redwood and virgin redwood wood products, Section 12I.3 shall not apply to bid packages advertised and made available to the public or any competitive and sealed bids received by the City entered into prior to September 1, 1997.

(2) With respect to tropical hardwood and tropical hardwood wood products, Section 12I.3 shall not apply to any amendment, modification or renewal of a contract, which contract was entered into prior to December 6, 1990, where such application would delay timely completion of a project or involve an increase in the total monies to be paid by the City and County under that contract. With respect to virgin redwood and virgin redwood wood products, Section 12I.3 shall not apply to any amendment, modification or renewal of a contract, which contract was entered into prior to September 1, 1997, where such application would delay timely completion of a project or involve an increase in the total monies to be paid by the City and County under that contract.

(3) The provisions of Section 12I.3 shall not apply where the contracting officer finds that:

(A) No person or entity doing business in the City and County is capable of performing the contract using acceptable non-tropical hardwood equivalents or non-virgin redwood equivalents, as the case may be, in each case as defined under Section 12I.2; or

(B) The inclusion or application of such provisions will violate or be inconsistent with the terms or conditions of a grant, subvention or contract with an agency of the State of California or the United States or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or contract;

(C) The use of tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products, as the case may be, is deemed necessary for purposes of historical restoration and there exists no available acceptable non-tropical wood equivalent or non-virgin redwood equivalent, as the case may be. (Added by Ord. 391-90, App. 12/6/90; amended by Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001)

## SEC. 12I.4. PURCHASE OR OTHER ACQUISITION OF COMMODITIES.

(a) Prohibited Transactions.

(1) The City and County shall not purchase or obtain for any purpose any tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products, wholesale or retail, in any form.

(b) Exceptions. This Section 12I.4 shall not apply to:

(1) With respect to tropical hardwood and tropical hardwood wood products, any contract entered into prior to December 6, 1990; or

(2) With respect to virgin redwood and virgin redwood wood products, any contract entered into prior to September 1, 1997; or

(3) The purchase of any tropical hardwood or tropical hardwood product for which there is no acceptable non-tropical hardwood equivalent; or

(4) The purchase of any virgin redwood or virgin redwood wood product for which there is no acceptable non-virgin redwood equivalent; or

(5) Where the contracting officer finds that no person or entity doing business in the City and County is capable of providing acceptable non-tropical hardwood equivalents or non-virgin redwood equivalents, as the case may be, sufficient to meet the City's contract requirements; or

(6) Where the inclusion or application of such provisions will violate or be inconsistent with the terms or conditions of a grant, subvention or contract with an agency of the State of California or the United States or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or contract. (Added by Ord. 391-90, App. 12/6/90; amended by Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001)

## SEC. 12I.5. CONTRACT CONDITIONS.

(a) All contracts involving wood or wood products entered into by any department of the City and County shall include as a material condition to that contract the following paragraph in the contract:

"Except as expressly permitted by the application of Sections 12I.3.b and 12I.4.b of the San Francisco Administrative Code, Contractor shall not provide any items to the City in performance of this contract which are tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products."

(b) Every contract shall also contain a statement urging companies not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. This Subsection (b) shall not apply to contracts with public entities for the provision of water or power and related services. (Added by Ord. 391-90, App. 12/6/90; amended by Ord. 304-92, App. 9/29/92; Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001)

## SEC. 12I.6. RULES AND REGULATIONS.

(a) The Purchaser shall promulgate any rules and regulations necessary or appropriate to carry out the purposes and requirements of this ordinance. Each department, board and commission of the City and County shall cooperate with, and provide in writing to, the Purchaser, all information necessary for the Purchaser to promulgate such rules and regulations.

(b) All contracts shall incorporate this Article by reference whenever applicable and shall provide that the failure of any bidder or contractor to comply with any of its requirements shall be deemed a material breach of contract. (Added by Ord. 391-90, App. 12/6/90; amended by Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001)

## SEC. 12I.7. PUBLIC RECORDS.

Any and all documents and reports prepared pursuant to the requirements of this ordinance shall be made available for public inspection upon proper request, except those prepared for purposes of litigation. (Added by Ord. 391-90, App. 12/6/90; amended by Ord. 38-01, File No. 010010, App. 3/16/2001)

## SEC. 12I.8. PENALTY.

(a) Whenever any department of the City and County discovers, after an investigation by the contracting fficer and the City Attorney, that a person or entity being considered for a contract or under contract with the and County has, in connection with the bidding, execution or performance of any City contract (1) falsely sented to the City and County the nature or character of the wood products offered, used or supplied under he contract, or (2) provided the City with tropical hardwood, tropical hardwood wood products, virgin redwood r virgin redwood wood products in violation of this ordinance, the rules and regulations adopted pursuant to this rdinance, or contract provisions pertaining to the prohibition against the use or purchase of tropical hardwood, ropical hardwood wood products, virgin redwood or virgin redwood wood products, the contracting officer shall ave the authority to impose such sanctions or take such other actions as are designed to ensure compliance with he provisions of this ordinance which shall include, but are not limited to:

(1) Refusal to certify the award of a contract;

(2) Suspension of a contract;

(3) Ordering the withholding of funds due the contractor under any contract with the City and County;

(4) Ordering the revision of a contract based upon a material breach of contract provisions or pertaining to representations made in bidding, execution or performance of the contract;

(5) Disqualification of a bidder or contractor from eligibility for providing commodities or services to the City and County for a period not to exceed five years, with a right to review and reconsideration by the contracting City office or department after two years upon a showing of corrective action indicating violations are not likely to reoccur.

(b) All contracts shall provide that in the event any bidder or contractor fails to comply in good faith with y of the provisions of this Article the bidder or contractor shall be liable for liquidated damages in an amount ual to the bidder's or contractor's net profit under the contract, or five percent of the total amount of the contract dollars whichever is greatest. All contracts shall also contain a provision whereby the bidder or contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County upon demand and may be set off against any monies due to the bidder or contractor from any contract with the City and County of San Francisco. (Added by Ord. 391-90, App. 12/6/90; amended by Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001)

## SEC. 12I.9. [RESERVED]

## SEC. 12I.10. IMPLEMENTATION REPORTS.

The Purchaser shall provide written reports on the implementation of this ordinance to the Board of Supervisors (1) at the first Board of Supervisors meeting held six months after this Article has taken effect; and (2) semiannually thereafter. Each department, board and commission of the City and County shall cooperate with, and provide in writing to, the Purchaser, whichever is appropriate, all information necessary for the Purchaser to prepare such reports. (Added by Ord. 391-90, App. 12/6/90; amended by Ord. 38-01, File No. 010010, App. 3/16/2001)

## SEC. 12I.11. SEVERABILITY.

If any section, subsection, clause, phrase or portion of this Article is for any reason held invalid or unconstitutional by any court or federal or State agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof. (Added by Ord. 391-90, App. 12/6/90; amended by Ord. 38-01, File No. 010010, App. 3/16/2001)

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# CHAPTER 12Q
# HEALTH CARE ACCOUNTABILITY

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### SEC. 12Q.1. TITLE.

This Chapter shall be known as the "San Francisco Health Care Accountability Ordinance." (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

### SEC. 12Q.2. DEFINITIONS.

As used in this Chapter, the following capitalized terms shall have the meanings set forth in the following provisions. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

### SEC. 12Q.2.1. AGENCY.

"Agency" shall mean the City's Purchasing Department. If the City creates an Office of Contract Administration ("OCA"), the OCA shall assume all responsibilities of the Agency under this Chapter. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

### SEC. 12Q.2.2. AGENCY DIRECTOR.

"Agency Director" shall mean the Director of Purchasing or his/her designee. If the City creates an Office of Contract Administration ("OCA"), the Director of OCA shall assume all responsibilities of the Agency Director under this Chapter. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

### SEC. 12Q.2.3. CITY.

"City" shall mean the City and County of San Francisco. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

## SEC. 12Q.2.4. CONTRACT.

(a) "Contract" shall mean an agreement between a Contracting Department and any person or entity that provides for public works or public improvements to be purchased, or for services to be performed, at the expense of the City. The term "Contract" also means an agreement between a Tenant or Subtenant and any person or entity to perform services on property covered by a Lease. The term "Contract" includes "Contract Amendment."

(b) Notwithstanding the foregoing, the term "Contract" does not include the following:

(1) Agreements for a duration of less than one (1) year. Contracting Departments and Tenants and Subtenants are prohibited from entering into multiple contracts of short duration with the proposed Contractor in order to evade the requirements of this Chapter;

(2) Agreements for the purchase or lease of goods, or for guarantees, warranties, shipping, delivery, installation or maintenance of such goods. Where an agreement is for the purchase or lease of both goods and other services, the agreement shall not be deemed a "Contract" if a preponderance of the contract amount is for goods;

(3) Agreements entered into pursuant to settlement of legal proceedings;

(4) Agreements for urgent or specialized advice, consultation or litigation services for the City Attorney's Office where the City Attorney finds that it would be in the best interests of the City not to include the requirements of this Chapter;

(5) Agreements with any person or entity if the amount of the agreement is less than $25,000 (in the case of a for-profit entity or person) or less than $50,000 (in the case of a Nonprofit Corporation). However, if the Contracting Party has multiple agreements with the City in a given fiscal year (which agreements would be considered "Contracts" under this Chapter except that the individual dollar amounts are below the thresholds set forth in the preceding sentence) and the cumulative amount of such agreements is $75,000 or more, the provisions of this Chapter shall apply to each such agreement from the date on which the triggering Contract is executed;

(6) Agreements for the investment, management or use of trust assets where compliance would violate the fiduciary duties of the trustee;

(7) Agreements executed prior to the Effective Date (unless and until a Contract Amendment is executed);

(8) Agreements executed after the Effective Date (unless and until a Contract Amendment is entered into) pursuant to, and within the scope of, bid packages or requests for proposals advertised and made available to the public prior to the Effective Date, unless the bid packages or requests for proposals are materially amended on or after the Effective Date;

(9) Agreements involving the expenditure by the City of special funds or other non-General Fund revenues to the extent that application of this Chapter would require the City to use General Fund monies to supplement the special funds or other non-General Fund revenues to maintain the current level of services;

(10) Agreements that require the expenditure of grant funds awarded to the City by another entity. If a Contract is funded both by grant funds and non-grant funds, the entire Contract is exempt; provided that, if the use of the grant funds is severable from the non-grant funds, the Contract is exempt only with respect to the use of the grant funds;

(11) Agreements pursuant to which the City awards a grant to a Nonprofit Corporation;

(12) Agreements with a public entity, unless the public entity is the San Francisco Redevelopment Agency,

e San Francisco LAFCO, the San Francisco Transportation Authority, the San Francisco Parking Authority or e San Francisco Health Authority;

3) Agreements for employee benefits to be provided to City employees, where the Director of Human esources finds that no person or entity is willing to comply with this Chapter and is capable of providing the quired employee benefits;

(14) Agreements for the investment, management or use of City monies where the Treasurer finds that equiring compliance with this Chapter will violate the Treasurer's fiduciary duties and for the investment of etirement, health or other funds held in trust pursuant to Charter, statute, ordinance or MOU where the official or fficials responsible for investing or managing such funds find that requiring compliance with this Chapter will iolate their fiduciary duties;

(15) Loan agreements and agreements made in connection with loans or grants under which the City, as reditor or grantor, is providing funds to be used by the debtor or grantee to

(A) Acquire an interest in real property on which residential improvements for low- or moderate-income ouseholds will be constructed;

(B) Construct improvements owned or leased by the debtor or grantee, on condition that residents of the improvements qualify as low- or moderate-income households; or

(C) Rehabilitate improvements owned or leased by the debtor or grantee; and

(16) Agreements between a Tenant or Subtenant and a Contractor to perform services on property covered by a Lease if the Contractor does not provide such services on a regular and on-going basis. For purposes of this emption, if employees of the Contractor I and any Subcontractors cumulatively work on the Lease property less an 130 days within a 12-month period, the agreement shall not be considered regular and on-going. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

## SEC. 12Q.2.5. CONTRACT AMENDMENT.

(a) "Contract Amendment" shall mean a modification to an agreement which extends the term, increases the total amount of payments due from the City (except where such increase is due solely to cost of living adjustments), or modifies the scope of services to be performed by the Contractor; provided that the resulting agreement falls within the definition of "Contract."

(b) Notwithstanding the foregoing, "Contract Amendment" does not include a onetime extension of the term of a Contract for up to 6 months, or a construction change order, modification or amendment to a Contract executed by the City for its benefit (as determined by the Agency Director). (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

## SEC. 12Q.2.6. CONTRACTING DEPARTMENT.

"Contracting Department" shall mean the City department, office, board, commission or other City agency that enters into the applicable Contract or Lease on behalf of the City. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

## SEC. 12Q.2.7. CONTRACTING PARTIES.

"Contracting Parties" shall mean Contractors, Subcontractors, Tenants, and Subtenants. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

## SEC. 12Q.2.8. CONTRACTOR.

"Contractor" shall mean the person or entity that enters into a Contract with the City. The term "Contractor" also means any person or entity that enters into a Contract with a Tenant or Subtenant to perform services on property covered by a Lease. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

## SEC. 12Q.2.9. COVERED EMPLOYEE.

(a) "Covered Employee" shall mean:

(1) An Employee of a Contractor or Subcontractor who works on a City Contract or Subcontract for 20 hours or more per Week:

(A) Within the geographic boundaries of the City; or

(B) On real property owned or controlled by the City, but outside the geographic boundaries of the City; or

(C) Elsewhere in the United States; and

(2) An Employee of a Tenant or Subtenant who works 20 hours or more per Week on property that is covered by a Lease or Sublease; and

(3) An Employee of a Contractor or Subcontractor that has a Contract or Subcontract to perform services on property covered by a Lease or Sublease if the Employee works 20 hours or more per Week on the property.

(4) Beginning on July 1, 2002, the number of hours an employee must work per Week in order to be considered a "Covered Employee" pursuant to this Subsection (a)(1), (2) and (3) shall be 15 or more.

(b) Notwithstanding the foregoing, the term "Covered Employee" does not include the following:

(1) Any Employee under the age of eighteen (18) who is a student, provided that the Employee does not replace, displace or lower the wage or benefits of any existing position or Employee; or

(2) Any Employee employed as a trainee in a bona fide training program consistent with Federal law, which training program enables the Employee to advance into a permanent position, provided that the Employee does not replace, displace or lower the wage or benefits of any existing position or Employee; or

(3) Any Employee that the Contracting Party is required to pay no less than the "prevailing rate of wage" in accordance with Section A7.204 of Appendix A to the City's Charter or Chapter 6 of the San Francisco Administrative Code; or

(4) Any disabled Employee who:

(A) Is covered by a current sub-minimum wage certificate issued to the employer by the U.S. Department of Labor; or

(B) Would be covered by such a certificate but for the fact that the employer is paying a wage equal to or higher than the minimum wage. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

## SEC. 12Q.2.10. EFFECTIVE DATE.

"Effective Date" shall mean the applicable effective date specified in Section 12Q.9 of this Chapter. (Added

Ord. 116-01, File No. 010848, App. 5/31/2001)

## 2Q.2.11. EMPLOYEE.

"Employee" shall mean any person who is employed by a Contracting Party, including part-time and nporary employees. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

## EC. 12Q.2.12. HEALTH DIRECTOR.

"Health Director" shall mean the Director of the Department of Public Health. (Added by Ord. 116-01, File o. 010848, App. 5/31/2001)

## EC. 12Q.2.13. LEASE.

(a) "Lease" shall mean a written agreement (including, without limitation, any lease, concession or license) which the City gives to another party the exclusive use of City Property for a term exceeding twenty-nine (29) onsecutive days in any calendar year, whether by single or cumulative instruments. "City Property" means real roperty that is owned by the City or of which the City has exclusive use, if such property is located within the ity or is under the jurisdiction of the San Francisco Airport Commission. If cumulative instruments cause the erm of the agreement to exceed twenty-nine (29) consecutive days, the agreement in question shall be subject to his Chapter only on and after the effective date of the instrument which causes the term to exceed twenty-nine 29) consecutive days. For the purposes of this definition and the definition of Sublease, "exclusive use" means he right to use or occupy real property to the exclusion of others, subject to the rights reserved by the party ranting such exclusive use. "Lease" includes "Lease Amendment."

b) Notwithstanding the foregoing, the term "Lease" does not include the following:

(1) Agreements granting a franchise or easement;

(2) Agreements with a public entity, unless the public entity is the San Francisco Redevelopment Agency, the San Francisco LAFCO, the San Francisco Transportation Authority, the San Francisco Parking Authority or the San Francisco Health Authority;

(3) Agreements entered into pursuant to settlement of legal proceedings;

(4) Revocable at-will use or encroachment permits for the use of or encroachment on City Property, regardless of the ultimate duration of such permits;

(5) Street excavation, street construction or street use permits or other regulatory permits;

(6) Agreements for the use of a City right-of-way, including circumstances where a contracting utility has the power of eminent domain;

(7) Agreements governing the use of City Property under the jurisdiction of the Recreation and Park Department primarily for recreational activities. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

## SEC. 12Q.2.14. LEASE AMENDMENT.

(a) "Lease Amendment" shall mean a modification to a Lease that extends the term or materially changes any other provision of the Lease.

(b) Notwithstanding the foregoing, "Lease Amendment" does not include a one-time extension of the term of a Lease for up to 6 months, or relocation of the leased premises at the request of the City for its benefit or convenience (as determined by the Agency Director). (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

## SEC. 12Q.2.15. NONPROFIT CORPORATION.

"Nonprofit Corporation" shall mean a nonprofit corporation, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and (if a foreign corporation) in good standing under the laws of the State of California, which corporation has established and maintains valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated under such Section. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

## SEC. 12Q.2.16. WEEK.

"Week" shall mean a consecutive seven-day period. If the Contracting Party's regular pay period is other than a seven-day period, the number of hours worked by an employee during a seven-day Week for purposes of this Chapter; shall be calculated by adjusting the number of hours actually worked during the Contracting Party's regular pay period to determine the average over a seven-day Week. However, such period of averaging shall not exceed a duration of one month. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

## SEC. 12Q.2.17. SUBCONTRACT.

(a) "Subcontract" shall mean an agreement between a Contractor and a person or entity pursuant to which the person or entity agrees to perform all or a portion of the services covered by a Contract.

(b) Notwithstanding the foregoing, the term "Subcontract" does not include:

(1) Agreements for the purchase or lease of goods, or for guarantees, warranties, shipping, delivery, installation or maintenance of such goods. When an agreement is for the purchase or lease of both goods and other services, the agreement shall not be deemed a "Subcontract" if a preponderance of the Contract amount is for goods;

(2) Agreements with a public entity, unless the public entity is the San Francisco Redevelopment Agency, the San Francisco LAFCO, the San Francisco Transportation Authority, the San Francisco Parking Authority or the San Francisco Health Authority. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

## SEC. 12Q.2.18. SUBCONTRACTOR.

"Subcontractor" shall mean a person or entity that enters into a Subcontract. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

## SEC. 12Q.2.19. SUBLEASE.

(a) "Sublease" shall mean any agreement with any person or entity for the exclusive right to occupy or use all or any portion of City Property covered by a Lease.

(b) Notwithstanding the foregoing, the term "Sublease" does not include each of the circumstances set forth in Section 12Q.2.13(b) that constitutes an exclusion from the definition of "Lease." (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

## SEC. 12Q.2.20. SUBTENANT.

"Subtenant" shall mean a person or entity that enters into a Sublease. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

## EC. 12Q.2.21. TENANT.

"Tenant" shall mean the person or entity that enters into a Lease with the City.(Added by Ord. 116-01, File o. 010848, App. 5/31/2001)

## EC. 12Q.3. HEALTH CARE ACCOUNTABILITY COMPONENTS.

(a) With respect to each Covered Employee who either resides in San Francisco (regardless of where the overed Employee provides services) or provides services covered by this Chapter in San Francisco, each ontracting Party shall do one of the following, at the Contracting Party's option:

(1) Offer to the Covered Employee health plan benefits that meet minimum standards prepared by the ealth Director and approved by the Health Commission. The minimum standards shall provide for a maximum eriod for each Covered Employee's health benefits to become effective, not to exceed 30 days from the start of mployment on a covered Contract, Subcontract, Lease or Sublease. The Health Commission shall review such tandards every two years to ensure that the standards stay current with State and Federal regulations and existing health benefits practices; or

(2) For each Week in which the Covered Employee works the applicable minimum number of hours set forth in Section 12Q.2.9(a) (definition of "Covered Employee"), pay to the City $1.50 per hour for each hour the Covered Employee is employed by the Contracting Party on the Contract or Subcontract or on property covered by a Lease, but not to exceed $60 in any Week. The City shall appropriate money received pursuant to this Subsection (a)(2) for the use of the Department of Public Health. The Department of Public Health shall use the monies appropriated for staffing and other resources to provide medical care for the uninsured. The Health Commission may increase this hourly rate and Weekly maximum in accordance with the Bureau of Labor tistics Consumer Price Index for Medical Care in the San Francisco Bay Area or such other factors as the Health Commission finds appropriate; provided, however, the Health Commission shall take this action no more than once a year and any adjustments in such hourly rate or Weekly maximum must be approved by the Board of Supervisors by resolution; or

(3) Participate in a health benefits program developed by the Health Director in consultation with the Agency. The Health Director shall obtain Health Commission approval of the program before implementing it. The Health Director shall seek such approval within twelve (12) months after this Chapter is finally approved. Prior to implementation of the health benefits program provided in this Subsection (a)(3), each Contracting Party shall comply with Subsection (a)(1) or (a)(2). After the Health Director implements the program, in addition to the options provided in Subsections (a)(1) and (a)(2), Contracting Parties may satisfy their obligations under this Chapter by complying with the requirements of the health benefits program. In developing the program, the Health Director shall (i) attempt to make health coverage available for uninsured Covered Employees and, if feasible, other uninsured City residents; (ii) use public health facilities to the maximum extent practicable; (iii) make the program economically viable; and (iv) provide a mechanism for funding which relies, as much as possible, on contributions by participating employers and employees.

(b) With respect to each Covered Employee who does not reside in San Francisco, but who provides services covered by this Chapter at the San Francisco Airport or at the San Bruno Jail, each Contracting Party shall do one of the options set forth in Subsection (a), at the Contracting Party's option.

(c) With respect to each Covered Employee who does not reside in San Francisco, and does not provide services covered by this Chapter in San Francisco, at the San Francisco Airport or at the San Bruno Jail, each Contracting Party shall do one of the following, at the Contracting Party's option:

(1) Offer to the Covered Employee health plan benefits that meet minimum standards prepared by the Health Director and approved by the Health Commission pursuant to Subsection 12Q.3(a)(1) above; or

(2) For each Week in which the Covered Employee works the applicable minimum number of hours set

forth in Section 12Q.2-9(a) (definition of "Covered Employee"), pay to the Covered Employee an additional $1.50 per hour for each hour the Covered Employee is employed by the Contracting Party on the Contract or Subcontract or on property covered by a Lease, but not to exceed $60 in any Week, to enable the employee to obtain health insurance coverage. This represents the City's current estimate of the average cost of obtaining individual health insurance benefits. The Health Commission may increase this hourly rate and Weekly maximum in accordance with the Bureau of Labor Statistics Consumer Price Index for Medical Care in the San Francisco Bay Area or such other factors as the Health Commission finds appropriate in order to track the cost of obtaining individual health insurance; provided, however, the Health Commission shall take this action no more than once a year and any adjustments in such hourly rate or Weekly maximum must be approved by the Board of Supervisors by resolution.

(d) Notwithstanding the above, if, at the time a Contract, Subcontract, Lease or Sublease is executed, the Contracting Party has 20 or fewer employees (or, in the case of a Nonprofit Corporation, 50 or fewer employees), including any employees the Contracting Party plans to hire to implement the Contract, Subcontract, Lease or Sublease, the Contracting Party shall not be obligated to provide the Health Care Accountability Components set forth in this Section 12Q.3 to its Covered Employees. In determining the number of employees had by a Contracting Party, all employees of all entities that own or control the Contracting Party and that the Contracting Party owns or controls, shall be included. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

### SEC. 12Q.4. CONTRACTUAL OBLIGATIONS.

(a) Each Contracting Party that enters into a Contract, Subcontract, Lease, or Sublease shall agree:

(1) To comply with the requirements of this Chapter, including the requirement to choose and perform one of the Health Care Accountability Components set forth in Section 120.3;

(2) To comply with regulations adopted by the Agency pursuant to this Chapter;

(3) To provide information and reports to the City in accordance with any reporting standards promulgated by the Agency in consultation with the Director of Health;

(4) To provide the City with access to pertinent records relating to the number of employees employed and terms of medical coverage as allowed by law after receiving a written request to do so and being provided at least five (5) business days to respond;

(5) To cooperate with the Agency when it conducts audits;

(6) To include in every Contract, Subcontract, Lease, or Sublease subject to this Chapter provisions requiring compliance with this Chapter, consistent with any directives or standards adopted by the Agency;

(7) To notify the Agency promptly of any Subcontractors performing services covered by this Chapter and certify to the Agency that it has notified the Subcontractors of their obligations under this Chapter; and

(8) To represent and warrant that it is not an entity that was set up, or is being used, for the purpose of evading the intent of this Chapter.

(b) A Contracting Party shall not discharge, reduce in compensation, or otherwise discriminate against any Employee for notifying the City regarding the Contracting Party's noncompliance or anticipated noncompliance with this Chapter, for opposing any practice proscribed by this Chapter, for participating in proceedings related to this Chapter, or for seeking to assert or enforce any rights under this Chapter by any lawful means. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

### SEC. 12Q.5. ADMINISTRATION AND ENFORCEMENT.

(a) The Agency, in consultation with the Department of Public Health, shall promulgate regulations for the interpretation and administration of this Chapter, which regulations shall be adopted only after public hearing.

(b) The Agency, in consultation with the City Attorney, shall develop contractual provisions for use by Contracting Departments designed to enable the City to pursue the remedies set forth in this Section against every person or entity required to comply with this Chapter.

(c) The Agency, in consultation with the Department of Public Health, may conduct audits of Contracting Parties, although such audits shall be conducted only with at least 10 days' advance written notice to the Contracting Party and after making good faith efforts for a mutually agreed upon time and location.

(d) The Agency and the Department of Public Health shall provide an annual joint report to the Board of Supervisors on compliance with this Chapter. Such report shall include cumulative information regarding the number of waivers granted pursuant to this Chapter.

(e) A Covered Employee may report to the Agency in writing any alleged violation of this Chapter by a Contracting Party or other person or entity subject to this Chapter. The Agency shall investigate any such report. If the Agency determines that any person or entity has violated this Chapter, the Agency shall notify the Contracting Department of its, findings. In order to ensure compliance with this Chapter and to enhance the monitoring activities of the Agency, the City encourages reporting by Covered Employees pursuant to this Subsection. The Agency shall keep confidential the Covered Employee's name and other identifying information, to the maximum extent permitted by applicable law.

(f) In addition to any other rights or remedies available to the City under the terms of any agreement of a Contracting Party or under applicable law, the City shall have the following rights:

(1) The right to charge the Contracting Party for any amounts that the Contracting Party should have paid to the City for hours worked by Covered Employees pursuant to Section 12Q.3(a)(2) and (b), together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

(2) The right to assess liquidated damages of $50 a day for each Covered Employee each day that the Contracting Party fails to pay to the City the amounts required by Subsection 12Q.3(a)(2) and (b);

(3) The right to set off all or any portion of the amount that a Contracting Party is required to pay to the City pursuant to preceding Subsections (g)(1) and (2) against amounts due to a Contracting Party;

(4) The right to terminate the Contract or Lease in whole or in part;

(5) The right to bar a Contracting Party from entering into future Contracts or Leases with the City for three (3) years.

(g) Each Contractor shall be responsible for its Subcontractors with respect to compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against the Contractor based on the Subcontractor's failure to comply, provided that the Contracting Department has first provided the Contractor with notice and an opportunity to obtain a cure of the violation.

(h) Each Tenant shall be responsible for each Subtenant, Contractor and Subcontractor performing services on property covered by the Tenant's Lease, with respect to compliance with this Chapter. If any Subtenant, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against the Tenant based on the Subtenant's, Contractor's or Subcontractor's failure to comply, provided that the Contracting Department has first provided the Tenant with notice and an opportunity to obtain a cure of the violation.

(i) Each of the rights set forth in this Section 12Q.5 shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this Section shall be used first to cover the costs of enforcing this Chapter and thereafter appropriated for the use of the Department of Public Health. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

## SEC. 12Q.6. WAIVERS BY THE AGENCY DIRECTOR.

(a) The Agency Director or designee, in consultation with the Department of Public Health, shall waive the requirements of this Chapter when the Contracting Department has provided justification to the Agency Director, and the Agency Director has found that one of the following circumstances exists:

(1) There is only one prospective Contractor or Tenant willing to enter into the applicable Contract or Lease on the terms and conditions established by the City (other than the requirements of this Chapter);

(2) The needed service, project or property arrangement under the Contract or Lease is available only from a sole source;

(3) Pursuant to Chapter 6 or 21 of the Administrative Code, the Contract or Lease is necessary to respond to an emergency that endangers the public health or safety;

(4) There are no qualified responsive bidders or prospective vendors or tenants that comply with the requirements of this Chapter and the agreement is for a service, lease or project that is essential to the City or the public;

(5) The public interest warrants the granting of a waiver because application of this Chapter would constitute an adverse impact on services or an unreasonable adverse financial impact on the City; or

(6) (A) The services to be purchased are available under a bulk purchasing arrangement with a federal, state or local governmental entity;

(B) Purchase under such arrangement will substantially reduce the City's cost of purchasing such services; and

(C) Purchase under such an arrangement is in the best interest of the City or the public.

(b) Each waiver shall be effective for the duration of the Contract or Lease. Subsequent waivers may be requested and either granted or denied. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

## SEC. 12Q.7. SPECIAL WAIVER BY THE PUBLIC UTILITIES COMMISSION.

The General Manager of the Public Utilities Commission may waive the requirements of this Chapter where the Contractor or Subcontractor is providing to or on behalf of the San Francisco Public Utilities Commission services relating to:

(a) The provision, conveyance or transmission of wholesale or bulk water, electricity or natural gas; or

(b) Ancillary requirements such as spinning reserve, voltage control, or loading scheduling, as required for ensuring reliable services in accordance with good utility practice; provided, however:

(1) The purchase of such services may not practically be accomplished through the City's standard competitive bidding procedures; and

(2) The Contractor or Subcontractor is not providing direct, retail services to end users within the geographic boundaries of the City. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

## SEC. 12Q.8. PREEMPTION.

Nothing in this Chapter shall be interpreted or applied so as to create any power or duty in conflict with any eral or state law. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

## C. 12Q.9. EFFECTIVE DATE.

This Chapter shall become effective, and its requirements shall be included in all covered Contracts, contracts, Leases and Subleases, 30 days after it is adopted or July 1, 2001, whichever occurs later. This apter is intended to have prospective effect only. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

## C. 12Q.10. PERIOD OF SUSPENSION.

Contracting Parties shall not be required to provide any of the Health Care Accountability Components ovided in Section 12Q.3 to their Covered Employees until such time as the Health Director has prepared, and e Health Commission has approved, minimum standards for health plan benefits pursuant to Section 12Q.3(a) ). The Health Director and Health Commission shall proceed promptly to take these actions. From the date on which the Health Commission approves such minimum standards forward, Contracting Parties shall provide e Health Care Accountability Components set forth in Section 12Q.3 to their Covered Employees. (Added by rd. 116-01, File No. 010848, App. 5/31/2001)

## EC. 12Q.11. SEVERABILITY.

If any part or provision of this Chapter, or the application of this Chapter to any person, location or ircumstance, is enjoined or held invalid by a court of law, the remainder of this Chapter, including the pplication of such part or provisions to other persons, locations or circumstances, shall not be affected by such ction and shall continue in full force and effect. To this end, the provisions of this Chapter are severable. her, to the extent Section 12Q.3(a)(2) may be enjoined or held invalid by a court of law, the Contracting Party ay alternatively comply in accordance with Section 12Q.3(c)(2). (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

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## APPENDIX G

## Statement of Ability to Comply
## with City and Other Governmental Requirements
## and Agreement to Conditions
## for
## Roundhouse Development

Name of Respondent: ________________________________________

1) The undersigned is a Respondent for this Roundhouse Development Opportunity.
2) The undersigned has reviewed the applicable Port Commission and other governmental requirements described in the Request for Proposals and the form Lease attached thereto applicable to this Roundhouse Development Opportunity ("Governmental Requirements").
3) Proposer has reviewed the Terms and Conditions set forth in Section X of the Request for Proposals.
4) The undersigned has reviewed, understands, and is ready, willing, and able to comply with all Governmental Requirements and agrees to be bound by the Terms and Conditions set forth in Section X of the Request for Proposals.

The undersigned are authorized representatives of Respondent.

______________________________ Title ______________________________

______________________________ Title ______________________________

______________________________ Title ______________________________

Date ______________________________

APPENDIX H

# EXCLUSIVE RIGHT TO NEGOTIATE

THIS EXCLUSIVE RIGHT TO NEGOTIATE ("Exclusive Right") is entered into as of this [ ] day of [ ], by and between the City and County of San Francisco ("City"), acting by and through its Port Commission ("Port"), and [ ], (referred to hereinafter as [ ]) upon the following facts, intentions and understandings of the parties:

A. [ ] desires to obtain an exclusive right to negotiate a lease for the [ ], located at [ ] in the City and County of San Francisco (the "Site"), under the general terms and conditions agreed upon by Port and [ ] herein and subject to all required permits and regulatory approvals being obtained by [ ].

B. The parties now desire to enter into this Exclusive Right to Negotiate to set forth the terms and conditions upon which Port and [ ] will enter into lease negotiations and seek to complete written lease documents for Port Commission approval.

NOW, THEREFORE, the parties hereto agree as follows:

1. Term. The term of this Exclusive Right shall commence on [ ] ("Commencement Date"), and shall expire on [ ] unless extended in accordance with Section 2 below ("Expiration Date"). The term of this Exclusive Right, including any extensions, is hereinafter referred to as the "Exclusive Negotiation Period." During the Exclusive Negotiation Period, the Port will not solicit or consider any other proposals or negotiate with any other developer with respect to the development of the Site.

a. Negotiating Fee-Amount. Upon execution of this Exclusive Right, [ ] shall deliver to Port the sum of [ ] ($ ) as a fee for the right to negotiate with the Port during the Exclusive Negotiation Period ("Negotiating Fee"). Except as otherwise provided herein, the Negotiating Fee shall be non-refundable and shall be applied to the Security Deposit and Base Rent obligations of [ ] under the terms of any lease agreement entered into by Port and [ ] and affecting the Site. In the event that [ ] is unable to secure all of the permits and regulatory approvals necessary to operate a concrete batching plant at the site, despite [ ] diligently initiated and pursued good faith efforts to do so, the Negotiating Fee shall be retained by the Port on the Expiration Date.

b. Security Instrument. In lieu of depositing the Negotiating Fee to Port in cash as provided in Section 1.a. above, [ ] may deliver to Port a security instrument such as a letter of credit or certificate of deposit; (a "Security Instrument") provided however, that said security instrument shall be (a) in a form and issued by a surety company or financial institution acceptable to Port in Port's sole discretion, (b) made payable only to Port and able to be liquidated without any action required by [ ], and (c) in a sum equal to the amount specified in Section 1.a. and adequately cover penalty charges and/or administrative fees imposed for early liquidation of the security instrument. The form of security instrument may be changed from time to time by mutual consent of Port and [ ]. If [ ] elects to deposit a certificate of deposit or other interest bearing instrument as a security deposit, [ ] shall be entitled to all interest payable on such certificates or instruments as the same becomes due if [ ] has made arrangements for such interest payments to be made directly to [ ] by the financial institution issuing such certificates or instruments. Port shall have no responsibility to pay, nor to make arrangements for payment, to [ ] of interest accruing on such certificates or instruments but in any event shall have no right to retain said interest. If [ ] deposits certificates of deposit or other interest-bearing instruments as a security deposit, [ ] shall renew or replace such instrument not later than ten days prior to expiration thereof, and, if [ ] fails to do so, Port shall be entitled to cash such instrument and to hold the funds so obtained as the Negotiating Fee required pursuant to Section 2.

If Tenant elects to use a letter of credit as a Negotiating Fee, [ ] shall keep the same, at its expense, in full force and effect throughout the Negotiating Period and until the sixtieth (60th) day after the Expiration Date or other termination hereof. Such letter of credit shall provide for sixty (60) days' prior written notice to Port by the issuing institution in the event of non-extension, cancellation or material change thereof. In such event, [ ] shall replace the letter of credit at least ten days prior to expiration thereof, and, if [ ] fails to do so, Port shall be entitled to present its written demand for payment of the entire face amount of said letter of credit and to hold the funds so obtained as the Negotiating Fee, or Option Payment referenced in Section 2 hereof.

## 2. Extension of Negotiating Period.

a. Option Period.. [ ] shall have six (6) one-month options (each an "Option Period") to extend the Exclusive Negotiation Period, commencing on [ ]. [ ] shall exercise each option to extend by written notice of the exercise of such option delivered with cash, or a security instrument of [ ] ($ ) per Option Period as an addition to the negotiating fee (each an "Option Payment") to Port at the address for notice set forth in Paragraph 8 below, not less than ten (10) days prior to the commencement of the next Option Period. In the event that the parties have been unable to execute a lease prior to the expiration of the original term of this Exclusive Right (or the preceding Option Period, if applicable) due solely to the failure of the San Francisco Department of City Planning Office of Environmental Review ("OER") to complete its environmental evaluation or a complete application timely submitted to OER by [ ] in time for execution of a lease on or before December 8, 1999, or the non culpable failure of [ ] to secure all of the permits and other regulatory approvals to operate a concrete batching plant on the Site, despite [ ] having diligently initiated and pursued efforts to do so, Port shall waive its rights to the appropriate Option Payment. This waiver shall not apply if [ ] causes the delay by its failure to comply with requests for information or other OER requirements or if [ ] fails to timely initiate and diligently pursue securing of all other required permits and regulatory approvals.

b. Option Payment Non-Refundable. Each Option Payment shall be subject to the provisions of Section 1.a. and 1.b. except as otherwise provided herein. [ ]'s failure to exercise any Option Period in accordance with this paragraph 2 shall extinguish all future Option Periods and shall terminate this Exclusive Right as of the last date of the Term or the applicable Option Period.

3. Negotiation of Lease. During the Exclusive Negotiation Period, Port and [ ] shall seek to complete a lease which will be subject to Port Commission approval. Both parties hereto agree to diligently and continuously negotiate the terms of such a lease in good faith.

The terms and conditions of lease shall be in substantial conformity with the terms and conditions set forth in Exhibit A attached hereto which have been agreed upon by the parties; provided, however, such terms are subject to change by mutual agreement of the parties. The parties acknowledge that the terms and conditions on Exhibit A merely purport to set forth general principles upon which the parties have agreed; and do not commit the Port to entering into a lease. Any binding lease shall be subject to review and approval by the parties, their respective legal counsel, the San Francisco Port Commission, San Francisco Board of Supervisors (if required). The parties further acknowledge that certain regulatory approvals are required for the use of the Site (collectively "Regulatory Approvals"), including, but not limited to, all necessary approvals from the Bay Conservation and Development Commission ("BCDC") and environmental review by the Office of Environmental Review of the City and County of San Francisco ("OER") pursuant to the California Environmental Quality Act (□CEQA□). Environmental review by OER shall be completed prior to the approval of any lease by the Port, and the Port will not approve any such lease unless the Port has considered the environmental review documents and determined that the project is exempt under CEQA or the project would have no significant adverse effects on the environment or, if any significant adverse effects are identified, the Port must find that such adverse impacts have been mitigated, required changes in the project to mitigate such impacts, or else made a statement of overriding considerations as provided in CEQA.. The effectiveness of any such lease shall be conditioned upon [ ] obtaining all other required Regulatory Approvals.

4. Regulatory Approvals, Submittals, and Disclosures.

a. [ ]'s Obligations. Except as provided in subsection 4.b below, [ ] agrees:

(i) It shall diligently and in good faith initiate applications to pursue all Permits and Regulatory Approvals;

(ii) It shall be solely responsible for obtaining all Permits and Regulatory Approvals, and [ ] shall not seek any Permit or Regulatory Approval without first obtaining the approval of Port;

(iii) It shall bear all costs associated with or complying with any necessary, Permit or Regulatory Approval except those costs incurred by the Port in complying with subsection 4.b, below;

(iv) It will pay and discharge any fines or penalties imposed as a result of the failure of [ ] to comply with the terms and conditions of any Permit or Regulatory Approval, and Port shall have no liability, monetary or otherwise, for said fines and penalties.

b. Port's Obligations. Port agrees that it will promptly cooperate with [ ] in filing for, processing and obtaining all Permits and Regulatory Approvals, and to the extent required by any regulatory agency issuing a Permit and Regulatory Approval, it will join with [ ] as co-applicant in filing, processing and obtaining all Permits and Regulatory Approvals necessary for the permitted uses specified in Exhibit A attached hereto. Nothing contained herein shall be deemed to limit or otherwise constrain Port's discretion, powers and duties as a regulatory agency of the City with certain police powers.

c. Indemnification. To the fullest extent permitted by law, [ ] agrees to indemnify and hold City, Port and their officers, agents and employees harmless from and against any loss, expense, cost, damage, attorneys' fees, penalties, claims or liabilities which City or Port may incur as a result of [ ]'s failure to obtain or comply with the terms and conditions of any Permit or Regulatory Approval regarding [ ]'s operations at the Site.

d. Submittal of Information. [ ] agrees to submit to Port, OER, BCDC and any other regulatory agency having approval over the project, all specifications, descriptive information, studies, reports, disclosures and any other information required to satisfy the application filing requirements of those agencies.

5. Non-Assignment. The parties acknowledge that Port is entering into this Exclusive Right on the basis of the special skills, capabilities and experience of [ ]. This Exclusive Right is personal to [ ] and is non-assignable without the written approval of the Port Executive Director.

6. Default.

a. Event of Default. The occurrence of any of the following shall constitute a default by [ ] after notice of the default and the expiration of the applicable cure period, if any:

(a) Failure to pay any sums due hereunder when due.

(b) Failure to perform or abide by any other provision of this Exclusive Right if such failure is not cured within twenty (20) days after notice has been given to [ ]. If the default cannot reasonably be cured within 20 days, [ ] shall not be in default of this Exclusive Right if [ ] commences to cure the default within the 20-day period and diligently and in good faith continues to cure the default.

(c) Either (a) the filing by [ ] or its corporate parent of a petition to have [ ] adjudicated insolvent and unable to pay its debts as they mature or a petition for reorganization or arrangement under any bankruptcy or insolvency law, or a general assignment by [ ] or its corporate parent for the benefit of creditors; or (b) the filing by or against [ ] or its corporate parent of any action seeking reorganization, arrangement, liquidation, or other relief under any law relating to bankruptcy, insolvency, or reorganization or seeking appointment of a trustee, receiver, or liquidator of [ ] or its corporate parent or of any substantial part of [ ]'s assets or those of its corporate parent.

b. Port's Remedies. In the event of default, Port, at its option, may terminate this Exclusive Right upon written notice to [ ], sent in accordance with Section 8 below. This remedy is not exclusive, but shall be cumulative with any remedies now or later allowed by law.

7. Attorneys Fees In the event of any action or proceedings at law or in equity between the Port and [ ] to enforce any provision of this offer to protect or establish any right or remedy of either party to this agreement, the unsuccessful party to such litigation shall pay to the prevailing party all costs and expenses as determined by the court, including reasonable attorneys' fees, incurred therein by such prevailing party; and if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorney's fees shall be included in and as a part of such judgment. For purposes of this Exclusive Right, reasonable fees of attorneys of the Office of City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in the City in law firms with approximately the same number of attorneys as employed by the Office of City Attorney.

8. Notices. Any notice given under this Exclusive Right shall be in writing and given by delivering the notice in person, by commercial courier or by sending it by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the mailing address listed below or any other address notice of which is given. For the convenience of the parties, copies of notices may also be given by telefacsimile, to the telephone number listed below or such other numbers as may be provided from time to time.

| | |
|---|---|
| **Port:** | **Commercial Property Manager**<br>**Port of San Francisco**<br>**Pier 1**<br>**San Francisco, CA 94111**<br>**Facsimile: (415) 274-0578**<br>**Telephone: (415) 274-0400** |
| **[ ]:** | **[ ]**<br>**[ ]**<br>**[ ]**<br>**[ ]**<br>**Facsimile:**<br>**Telephone:** |

In the event that [ ] must be legally served, [ ] 's agent for service of process is the same as above.

Any mailing address or facsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change.

All notices under this Exclusive Right shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the retum receipt. A person may not give official or binding notice by facsimile. The effective time of a notice shall not be affected by the receipt, original, of a facsimile copy of the notice.

9. City Requirements

a. Non-Discrimination. [ ] shall not, in carrying out its obligations hereunder, discriminate against any person or group of persons solely because of race, color, creed, national origin, ancestry, age, sex, sexual orientation, disability or acquired immune deficiency syndrome (AIDS) or AIDS related condition (ARC). The provisions of Chapters 12B and 12C of the San Francisco Administrative Code, relating to nondiscrimination by parties contracting with the City and County of San Francisco, are incorporated herein by this reference and made a part hereof as though fully set forth herein. [ ] agrees to comply with all provisions of such Chapters 12B and 12C that apply to tenants and licensees of the City and County of San Francisco.

b. MacBride Principles-Northern Ireland. City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

c. Tropical Hardwood Ban. City urges [ ] not to import, purchase, obtain, or use for any purpose, any tropical hardwood or tropical hardwood wood products, virgin redwood or virgin redwood wood products.

d. First Source Hiring.

The City has adopted a First Source Hiring Ordinance (San Francisco Administrative Code §83.1 et. seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions. Pursuant to §83.7(b) of the First Source Hiring Ordinance, the Port Commission has adopted a First Source Hiring Implementation and Monitoring Plan ("Port Plan") subject to approval by the First Source Hiring Administration. Tenant acknowledges receiving and reviewing the First Source Hiring Ordinance. Under Section 83.9(d) of the first Source Hiring Ordinance, compliance by an employer with the Port Plan is deemed to be compliance with the provisions of the First Source Hiring Ordinance.

(a) Based on the foregoing Tenant agrees to comply with the Port Plan through compliance with all of the following measures:

(b) Tenant shall notify the City and County of San Francisco's Workforce Development System, Department of Human Services of all projected Entry Level Positions and the approximate date such positions will be available, by using the Job Survey Form provided by the Port of San Francisco. The Port will also provide the Tenant with a detailed instruction sheet summarizing the procedure for the commencement of the lease. Tenant shall return the Job Survey Form to the Port within 30 days after execution of the lease by the Port and Tenant.

(c) For purposes of this Agreement the terms "Entry Level Position", "San Francisco Workforce Development System", "Qualified Economically Disadvantaged Individual", and "First Source Hiring Agreement" shall have the meaning provided in Section 83.4 of the San Francisco Administrative Code.

Tenant shall notify the San Francisco Workforce Development System of all vacancies for existing or new Entry Level Positions on the premise, during the lease term, and shall offer the San Francisco Workforce Development System the first opportunity to provide Qualified Economically Disadvantaged Individuals for employment in these positions.

(d) Tenant shall not publicize or otherwise post such vacancies until the San Francisco Workforce Development System refers Qualified Economically disadvantaged Individuals for employment in these positions or notifies Tenant that no Qualified Economically Disadvantaged Individuals are available for the particular vacancies. The San Francisco Workforce Development System shall respond to Tenant within ten (10) business days. After 10 business days, if the San Francisco Workforce Development System does not refer applicants, Tenant can advertise and fill Entry Level Positions outside of the City referral system.

(e) Tenant shall interview qualified applicants and use good faith in hiring applicants. Tenant shall maintain good records of recruitment and hiring process, and shall permit Port or City to audit such records upon request.

Pursuant to Section 83.10 of the Ordinance, if upon administrative review, it is determined that Entry Level positions were not made available to the San Francisco Workforce Development system for referral of Qualified Economically Disadvantaged Individuals, and the Employer does not remedy the violations, the Employer shall be assessed a penalty in the amount of $2,070 for every new hire for an Entry Level Position improperly withheld from the First Source Hiring process.

e. Requiring Health Benefits for Covered Employees.

Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q (Chapter 12Q), including the implementing regulations as the same may be amended or updated from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth herein. The text of the HCAO is currently available on the web at www.ci.sf.ca.us\HCAO. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee Tenant shall provide the appropriate health benefit set forth in Section 12Q.3.

(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) Tenant understands and agrees that the failure to comply with the requirements of the HCAO shall constitute a material breach by Tenant of this Lease

(d) If, within 30 days after receiving written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(e) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify the Purchasing Department when it enters into such a Sublease or Contract and shall certify to the Purchasing Department that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO for each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that the Contracting Department has first provided Tenant with notice and an opportunity to cure the violation.

(f) Tenant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(g) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(h) Tenant shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(i) Upon request, Tenant shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subtenants, Contractors, and Subcontractors.

(j) Within five (5) business days of any request, Tenant shall provide the City with access to pertinent records relating to any Tenant's compliance with the HCAO. In addition, the City and its agents may conduct random audits of Tenant at any time during the term of this Lease. Tenant agrees to cooperate with City in connection with any such audit.

(k) If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the City or relating to City-owned property is less than $25,000 (or $50,000 for nonprofits) in that fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed $75,000 in that fiscal year, then all of the Contractor's or Subcontractor's contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed $75,000 in the fiscal year.

10. Captions Used. Captions or titles utilized in the terms and conditions of this Exclusive Right are used for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

11. Waiver of Relocation. Tenant hereby waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §7260 et seq., and the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §4601 et seq., or under any similar law, statute or ordinance now or hereafter in effect.

12. Time is of the Essence. Time is of the essence of each provision of this Exclusive Right.

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**WHEREFORE,** this Exclusive Right to Negotiate was executed by the parties hereto on the last date set forth hereinbelow.

**PORT:**
CITY AND COUNTY OF SAN FRANCISCO,
A municipal corporation, operating
by and through the SAN FRANCISCO
PORT COMMISSION

By______________________________
Kenneth E. Winters
Director, Real Estate

Dated:______________________________

**TENANT:**

| | |
|---|---|
| By______________________________ | By______________________________ |
| Its______________________________ | Its______________________________ |
| Dated:______________________________ | Dated:______________________________ |

**APPROVED AS TO FORM:**
DENNIS J. HERRERA, City Attorney

By______________________________
Deputy City Attorney

Dated:______________________________

Lease Prepared By: [ ], Property Manager ____________ (Initial)

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# APPENDIX I

FINAL CASE REPORT APPROVED 6/6/79 LANDMARKS PRESERVATION ADVISORY BOARD
CONFIRMED 3/27/80

LDING NAME: Beltline Railroad Roundhouse Complex
OWNER: Port of San Francisco
BUILDING ADDRESS: Lombard, Sansome & the Embarcadero
BLOCK & LOT: 58/1
ZONING: C-2
ORIGINAL USE: Roundhouse
NO. OF STORIES: one
LPAB VOTE: 6-0
CURRENT USE: Roundhouse
EXTERIOR MATERIALS: Cement plaster

STATEMENT OF SIGNIFICANCE:
(Describe special CHARACTER, or special HISTORICAL, ARCHITECTURAL or AESTHETIC interest or value:)

The Beltline Roundhouse Complex is the only one remaining in San Francisco. The Belt Line System of which it is a part was "One of San Francisco's unique and most important features today, and one that distinguishes it from practically every other great port on the western continent in the efficiency of its Belt Railroad, so called, whereby every pier and practically every berth alongside is connected directly with the railway systems of America", according to Harbor Commissioner Edward Murphy, in 1923.

The Roundhouse Building is a rare example of a building whose form derives solely from its functional requirements. It is totally devoid of the decorative elements usually associated with even the most utilitarian buildings of this period, and, as such, it becomes a significant forerunner of the structural expressionism that was to become a major concept in "modern" architecture (may be continued on back)

EVALUATION CRITERIA

A. ARCHITECTURE
1. Style: Industrial Functional
2. Construction Type: Reinforced concrete
3. Construction Date: 1914/1918 (outbuilding)
4. Design Quality: (LPAB ONLY) Very good (See statement of significance)
5. Architect: Unknown
6. Interior Quality: (LPAB ONLY) N/A

HISTORY
(as building is significantly associated with specific)
7. Persons:

8. Events:

9. Patterns of History:
(cultural, social, political, military, economic or industrial)
A beltline railroad, linking San Francisco's piers and industrial areas with the railroad system of the country, was first proposed in 1873, but actual construction (over)

C. ENVIRONMENT
(relation to surroundings, specifically in terms of:)
10. Continuity: The Roundhouse and outbuilding are visual landmarks by virtue of the uniqueness of their design and use, and their isolation. In the setting of the piers (over)
11. Setting:

12. Importance as a Visual Landmark:

D. INTEGRITY
(cite alterations and physical condition)
There has been little change to the exterior of the two buildings. Their condition appears to be good.

RATINGS
DCP: Not inventoried
HERE TODAY: Not mentioned
SPLENDID SURV.: N/A
NAT'L REGISTER: Probably eligible
NAT'L LANDMARK: No
STATE LANDMARK: No

attach photograph Here

BIBLIOGRAPHY:
(list sources on back)
PREPARED BY: Marjorie Gordon
ADDRESS: 100 Larkin Street
San Francisco, CA 94104
PHONE: 558-3055
DATE: March 27, 1980

did not take place until 1890. At that time, the railroad went from the freight ferry slip at the foot of Lombard Street, and ran north to Powell and south to Pacific, a total length of about one mile. In 1912, the gap between the northern and southern portions of the railroad was bridged, and a roundhouse was built to handle the increased freight activity. It provided a drop pit, machine shop, blacksmith shop, store room and engine house, and was completed in 1914. In 1918, a small reinforced concrete supply station was built on the corner of Lombard and the Embarcadero. Three other wooden structures, built at a later date, have recently been torn down.

10. and railroad yards, they provide a continuity with the past, when San Francisco was a thriving port.

PORT OF
SAN FRANCISCO

# MEMORANDUM

December 11, 2003

**TO:** MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Michela Alioto-Pier
Hon. Sue Bierman
Hon. Wilfred Hsu

**FROM:** Douglas F. Wong
Executive Director

**SUBJECT:** Approval of 2003 Licensing Agreement for New Year's Eve

DIRECTOR'S RECOMMENDATION: Approve Licensing Agreement

The City and County of San Francisco has requested for Port property to produce the City's annual New Year's Eve event on December 31, 2003. The City and County of San Francisco New Year's Eve Event plans for free DJ music followed by a waterfront fireworks display on the Embarcadero between Mission and Howard Streets.

The event will begin at 10 p.m. and run no later than 1 a.m. The fireworks will go off at midnight with the focal point in the area south of the Ferry Building and several barges along the Bay located south of the Ferry Building. There will be no food or beverages available for purchase. The San Francisco Police Department (SFPD) indicates that they will be aggressively enforcing prohibitions on the consumption of alcoholic beverages in public places during the event.

To balance between the pedestrian traffic for the event and the need to maintain traffic flow along the Embarcadero, the SFPD and the San Francisco Department of Parking and Traffic (DPT) have developed a traffic plan that will include key points to detour traffic.

Enclosed is the licensing agreement for the Commission's approval.

Prepared by Jeff Bauer

This Print Covers Calendar Item No. 7B

## PORT COMMISSION
## CITY & COUNTY OF SAN FRANCISCO

## RESOLUTION NO. 03-74

WHEREAS, the City and County of San Francisco has requested for Port property to produce the City's annual New Year's Eve event on December 31, 2003; and

WHEREAS, the Port of San Francisco issues at no charge a license to use property to the promoter of this event, Bill Graham Presents; and

WHEREAS, the Port of San Francisco incurs significant expenses related to this event such as foregone revenues; now, therefore be it

RESOLVED, that the Port of San Francisco issues a License to Use Property for the New Year's Eve event for 2003.

***I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of December 16, 2003.***

______________________________
Secretary

PORT OF
SAN FRANCISCO

# SAN FRANCISCO PORT COMMISSION
PIER 1
SAN FRANCISCO, CA 94111

## LICENSE TO USE PROPERTY

### BASIC LICENSE INFORMATION

**Licensee:** BILL GRAHAM ENTERPRISES, INC.

**Licensee is:** Corporation ☐ Individual ☐ Partnership ☐ Non-Profit ☐

**Licensee address:**
Bill Graham Presents
260 – 5th Street
San Francisco, CA 94042

**Activity:** New Year's Eve Celebration and Field Office

| | | | |
|---|---|---|---|
| **Contact:** | Steve Paine | (415) 371-5500 | (415) 243-9034 |
| | **Name** | **Phone No.** | **Fax No:** |

**Activity Date(s):** December 27, 2003 to January 2, 2004

**Location:** Suite 105-108 in the Agriculture Building and the Tidal Plaza on Herb Caen Way

**Fees (Section 3):** $0

**Security Deposit (Section 5)** $0

**Utilities & Services (Section 9.a, 9.b):** Licensee Responsibility

**Maintenance and Repairs (Section 9.c):** Licensee Responsibility

**Cure Period (Section 13a.(2):** Twenty four (24) hours

**Mineral Reservation (Section 21):** California Grid System, Zone 3, Beginning at a point where X equals 1,454,000 and Y equals 475,500 extending 1,000 feet east, thence 1,000 feet south, thence 1,000 feet west and thence 1,000 feet north, ending at said point of beginning.

**Address for Notices to Licensee (Section 12):**

Bill Graham Presents
260 – 5th Street
San Francisco, CA 94042

**Name/Address of Agent for Service of Process, if Tenant is a Corporation:**

Corporation Service Company
2730 Gateway Oaks, Suite 100

Sacramento, CA 95833

**Address for Notices to Port:**

Port of San Francisco
Pier 1
San Francisco, CA 94111
Attn.: Director, Real Estate Division

This License, dated for reference purposes only as of December 10, 2003, is by and between the City and County of San Francisco, a municipal corporation ("City"), operating by and through the San Francisco Port Commission ("Port"), and Licensee, who agree as follows:

**1. Basic License Information**. The Basic License Information that appears on the preceding pages of this License is hereby incorporated by reference into this License and shall become part of the terms and conditions hereof.

**2. Grant of License**. The SAN FRANCISCO PORT COMMISSION, in consideration of the stated conditions and agreements, hereby grants permission to Licensee to carry on the above-stated activity in the time, place and manner set forth herein. The parties acknowledge that the relationship created hereby is that of a license granting Licensee a privilege to perform the activities permitted hereunder upon Port property. The parties further acknowledge that this License is revocable by Port pursuant to the terms hereof, and does not convey to Licensee an exclusive right to possession of the License Area.

**3. Fees**. Licensee shall pay the Fees set forth in the Basic License Information on or before the first day of the Activity Date set forth in the Basic License Information, and thereafter if applicable, upon the first day of each month during the term of this License.

**4. Late Charges**. Licensee acknowledges that late payment by Licensee to Port of Fees due hereunder will cause Port increased costs not contemplated by this License, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, a fee equivalent to one and one-half percent (1-1/2%) of all Fees, or any portion thereof, which is due and unpaid for more than thirty (30) days will be paid by Licensee for each month that such Fees, or any portion thereof, remain due and unpaid, plus reasonable attorneys' fees incurred by Port by reason of Licensee's failure to pay Fees when due under this License. Late Charges shall be computed from the date on which such Fee(s) first became due. The parties agree that such Late Charges represent a fair and reasonable estimate of the cost, which Port will incur by reason of any late payment by Licensee.

**5. Security Deposit**. Licensee shall pay to Port on or before the first Activity Date hereof, in addition to the advance payment of the Fees, the security deposit, in cash, in the sum specified in the Basic License Information, as security for the faithful performance by Licensee of all terms, covenants and conditions of this License. Licensee agrees that Port may (but shall not be required to) apply the security deposit in whole or in part to (a) pay any sum due to Port under this License; (b) compensate Port for any damage to the License Area caused by Licensee; or (c) cure any default by Licensee. If Port uses any portion of the security deposit to cure any default by Licensee hereunder, Licensee shall immediately replenish the security deposit to the original amount. Port's obligation with respect to the security deposit is solely that of debtor and not trustee. Licensee shall not be entitled to any interest on such deposit. If Licensee is not in default at the termination of this License, Port shall return the unused balance of the security deposit to Licensee after Licensee vacates the License Area. The amount of the security deposit shall in no way limit Licensee's obligations under this License, and nothing contained in this section shall in any way diminish or be construed as waiving any of Port's other remedies set forth in this License or provided by law or equity.

**6. Activity**. If the Basic License Information limits the times and location of the activities permitted hereunder, then Licensee shall not conduct the activity at times and locations other than at the times and locations hereinabove specified unless express permission is granted.

**7. Use**. Licensee shall not use Port property in any manner that will constitute waste, nuisance or unreasonable annoyance to Port, its Licensees or the owners or occupants of adjacent properties. Licensee's operations hereunder shall not interfere with Port's use of its property. Operations hereunder

must not obstruct traffic. Persons subject to this License must comply with the directions of the San Francisco Police Department and Fire Department in connection therewith.

**8. Compliance with Laws and Regulations**. Licensee, at Licensee's sole cost and expense, promptly shall comply with all laws, statutes, ordinances, resolutions, regulations, judicial decisions, proclamations, orders, decrees or policies of any municipal, county, state or federal government or the departments, courts, commissions, boards and officers thereof, or other governmental or regulatory authority with jurisdiction over the Licensee and the License Area or any portion thereof, including without limitation, the Port (collectively, "Laws") relating to or affecting the condition, use or occupancy of the License Area in effect either at the time of execution of this License or which may hereafter be in effect at any time during the term hereof, whether or not the same are now contemplated by the parties.

**9. Utilities, Services, Maintenance and Repairs**.

**a. Utilities**. Licensee shall make arrangements and shall pay all charges for all utilities to be furnished on, in or to the Premise or to be used by Licensee, including, without limitation, gas, electrical, water, sewer and telecommunication services. Licensee shall pay all charges for said utilities, including charges for the connection and installation of the utilities.

**b. Services**. Licensee shall make arrangements and shall pay all charges for all services to be furnished on, in or to the License Area or to be used by Licensee, including, without limitation, garbage and trash collection, janitorial service and extermination service.

**c. Maintenance and Repairs**. Except as otherwise provided in the Basic License Information, Licensee shall at all times during the term of this License, and at its sole cost and expense, maintain and repair in good and working order, condition and repair the License Area and all improvements and alterations thereon. Port shall not be obligated to make any repairs, replacement or renewals of any kind, nature or description whatsoever to the License Area nor to any improvements or alterations now or hereafter located thereon. In the event that Licensee, its agents or invitees cause any damage (excepting ordinary wear and tear) to the License Area, Port may repair the same at Licensee's expense and Licensee shall immediately reimburse Port therefor.

**10. Taxes and Assessments**. Licensee agrees to pay to the proper authority any and all taxes, assessments and similar charges on the License Area in effect at the time this License is entered into, or which become effective thereafter, including all taxes levied or assessed upon the possession, use, or occupancy, as distinguished from the ownership to the License Area. Licensee, on behalf of itself and any permitted successors and assigns, recognizes and understands that this License may create a possessory interest subject to property taxation and that Licensee, and any permitted successor or assign may be subject to the payment of such taxes. Licensee, on behalf of itself and any permitted successors and assigns, further recognizes and understands that any assignment permitted hereunder and any exercise of any option to renew or extend this License may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Licensee shall report any assignment or other transfer of any interest in this License or any renewal or extension hereof to the County Assessor within 60 days after such assignment transaction or renewal or extension. Licensee further agrees to provide such other information as may be requested by the City or Port to enable the City or Port to comply with any reporting requirements under applicable law with respect to possessory interest.

**11. Insurance**.

**a.** Licensee shall maintain throughout the term of this License, at Licensee's expense, insurance as follows:

(1) Workers' Compensation Insurance, including Employers' liability with limits not less than $1,000,000 each accident;

(2) Comprehensive or Commercial General Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverage for Contractual Liability, Personal Injury, Advertising Liability, Liquor Liability, Independent Contractors, Explosion, Collapse and Underground (XCU), Broadform Property Damage, Sudden and Accidental Pollution, Products Liability and Completed Operations;

(3) Comprehensive or Business Automobile Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverage for owned, non-owned and hired automobiles, as applicable.

**b.** Should any of the required insurance be provided under a claims-made form, Licensee shall maintain such coverage continuously throughout the term of this License, and, without lapse, for one year

beyond the License expiration, to the effect that, should occurrences during the License term give rise to claims made after expiration of the License, such claims shall be covered by such claims-made policies.

**c.** Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be not less than double the occurrence limits specified above.

**d. Liability policies shall be endorsed to name as additional insureds the City and County of San Francisco, the San Francisco Port Commission, and their officers, directors, employees and agents (Insurance Certificate with Endorsement for Additional Insureds).**

**e.** All insurance policies shall be endorsed to provide thirty-(30) days prior written notice of cancellation, non-renewal or reduction in coverage or limits to Port at the address for Notices specified in the Basic License Information.

**f.** All insurance policies shall be endorsed to provide that such insurance is primary to any other insurance available to the additional insureds with respect to claims covered under the policy and that insurance applies separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

**g.** Before commencement of activities under this License, certificates of insurance, in form and with insurers acceptable to City, shall be furnished to City promptly upon request, along with complete copies of policies.

**h.** **Waiver of Subrogation Rights**. The parties release each other, and their respective authorized representatives, from any claims for damage to the License Area or to the fixtures, personal property, improvements or alterations of either Port or Licensee in or on the License Area which are caused by or result from risks insured against under any property insurance policies carried by the parties and in force at the time of any such damage, to the extent such claims for damage are paid by such policies. Each party shall cause each property insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against the other party in connection with any damage covered by any policy.

**12.** **Notices**. All notices, demands, consents or approvals which are or may be required to be given by either party to the other under this License shall be in writing and shall be deemed to have been fully given when delivered in person to such representatives of Port and Licensee as shall from time to time be designated by the parties for the receipt of notices, or when deposited in the United States mail, postage prepaid, and addressed, to Port or Licensee at the addresses designated in the Basic License Information, or such other address with respect to either party may from time to time designate by notice to the other given pursuant to the provisions of this Paragraph.

**13.** **Default by Licensee**.

**a.** **Event of Default**. The occurrence of any one or more of the following events shall constitute a default by Licensee:

(1) Failure by Licensee to pay when due any Fees and/or all other charges due hereunder; or

(2) Failure to perform any other provisions of this License, if the failure to perform is not cured within the Cure Period set forth in the Basic License Information after notice has been given by Port to Licensee. If the default cannot reasonably be cured within the Cure Period, Licensee shall not be in default of this License if Licensee commences to cure the default within the Cure Period, and diligently and in good faith continues to cure the default.

**b.** **Port's Remedies**. Upon default by Licensee, Port shall, without further notice or demand of any kind to Licensee or to any other person, and in addition to any other remedy Port may have at law or in equity, have the ability to terminate this License and Licensee's right to use the License Area.

**14.** **Indemnity and Exculpation**.

**a.** **Indemnity**. Licensee shall indemnify and hold Port, City, and their agents, officers, directors, contractors and employees (collectively, "Agents") harmless from, and, if requested, shall defend them against any and all claims, direct or vicarious liability, damage, injury or loss arising directly or indirectly out of: (a) any injury to or death of any person, including employees of Licensee, or damage to or destruction of any property occurring in, on or about the License Area, or any part thereof, from any cause whatsoever, (b) any default by Licensee in the observance or performance of any of the terms, covenants or conditions of this License, (c) the use, occupancy or condition of the License Area or the activities therein by Licensee, its agents, or clients, customers, invitees, guests, members, licensees, and assignees (collectively, "Invitees") or (d) any release or discharge, or threatened release or discharge, of

any substance, waste or material which now or in the future is determined by any state, federal, or local governmental authority to be capable of posing a present or potential risk of injury to health, safety, the environment or property (collectively, "Hazardous Material") caused or allowed by Licensee in, under, on or about the License Area, or into the environment. This indemnity shall be enforceable regardless of the negligence of Port or City, and regardless of whether liability without fault is imposed or sought to be imposed on Port or City. This indemnity shall be enforceable except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on, or validly retroactive to, the date of this License. This indemnity includes all such loss, damage, injury, liability or claims as described above, loss predicated in whole or in part, upon active or passive negligence of Port, City or their Agents. This indemnity shall exclude claims, liability, damage or loss resulting solely and exclusively from the willful misconduct of Port or City which is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, Licensee, its agents or Invitees.

In addition to Licensee's obligation to indemnify Port and City, Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend Port and City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent. Licensee's obligation to defend shall arise at the time such claim is tendered to Licensee by Port and/or City and shall continue at all times thereafter.

The foregoing indemnity obligation of Licensee shall include without limitation, indemnification from all loss and liability, including attorney's fees, court costs and all other litigation expenses. This indemnification by Licensee shall begin from the first notice that any claim or demand is or may be made. The provisions of this section shall survive the termination of this License with respect to any damage, destruction, injury or death occurring prior to such termination.

**b. Exculpation**. Licensee, as a material part of the consideration to be rendered to Port, hereby waives any and all claims against Port, City and their Agents, and agrees to hold Port, City and their Agents harmless from any claims for damages to goods, wares, goodwill, merchandise, equipment, business opportunities and persons in, upon or about said License Area for any cause arising at any time, including without limitation all claims arising from the joint or concurrent negligence of Port or City or their Agents, but excluding any intentionally harmful acts committed solely by Port or City.

**15. Hazardous Materials**.

**a. Requirements for Handling**. Neither Licensee nor its Agents or Invitees, shall use, generate, process, produce, package, treat, store, emit, discharge or dispose (collectively, "Handle") in, on or about the License Area any Hazardous Materials without the prior written consent of Port, which consent shall not be unreasonably withheld so long as Licensee demonstrates to Port's reasonable satisfaction that such Hazardous Material is necessary to Licensee's business, will be Handled in a manner which strictly complies with all Laws and will not materially increase the risk of fire or other casualty to the License Area. Notwithstanding the foregoing, Licensee may Handle on the License Area janitorial or office supplies or materials in such limited amounts as are customarily used for general office and janitorial purposes so long as such Handling is at all times in full compliance with all Laws.

**b. Licensee Responsibility**. Subject to the restrictions set forth in Section 15.a above, Licensee shall Handle all Hazardous Materials discovered on the License Area during the Term of this License or introduced on the License Area by Licensee, its Agents or Invitees, in compliance with all Laws. Licensee shall not be responsible for the safe Handling of Hazardous Materials introduced on the License Area during the term of this License by City, Port or their Agents. Licensee shall protect its employees and the general public in accordance with all Laws. Port may from time to time request, and Licensee shall be obligated to provide, information reasonably adequate for Port to determine that any and all Hazardous Materials are being Handled in a manner which complies with all Laws. Port shall have the right to inspect the License Area for Hazardous Materials at reasonable times, pursuant to its rights of entry provided for hereunder.

**c. Requirement to Remove**. Prior to termination of this License, Licensee, at its sole cost and expense, shall remove any and all Hazardous Materials introduced in, on, under or about the License Area by Licensee, its Agents or Invitees. Further, Licensee, at its sole cost and expense, shall remove any Hazardous Material discovered on the License Area during the term of this License which is required to be removed by any governmental agency, including Port; provided however, that Licensee shall not be obligated to remove any Hazardous Material introduced onto the License Area during the term of this License by the City, Port or their Agents.

**16. Port's Entry on License Area**.

**a. Entry for Inspection**. Port and its authorized Agents shall have the right to enter the License Area without notice at any time during normal business hours of generally recognized business days, provided that Licensee or Licensee's Agents are present on the License Area, for the purpose of inspecting the License Area to determine whether the License Area are in good condition and whether Licensee is complying with its obligations under this License, and to perform any necessary maintenance, repairs or restoration to the License Area, or to perform any services which Port has the right or obligation to perform.

**b. Emergency Entry**. Port may enter the License Area at any time, without notice, in the event of an emergency. Port shall have the right to use any and all means which Port may deem proper in such an emergency in order to obtain entry to the License Area. Entry to the License Area by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of the License Area, or an eviction of Licensee from the License Area or any portion of them.

**c. No Liability**. Port shall not be liable in any manner, and Licensee hereby waives any claim for damages, for any inconvenience, disturbance, loss of business, nuisance, or other damage, including without limitation any abatement or reduction in License fees due hereunder, arising out of Port's entry onto the License Area as provided in this Section 16, except damage resulting solely from the active negligence or willful misconduct of Port or its authorized representatives.

**d. Non-Disturbance**. Port shall use its best efforts to conduct its activities on the License Area as allowed in this section, in a manner which, to the extent reasonably practicable, will cause the least possible inconvenience, annoyance or disturbance to Licensee.

**17. Improvements and Alterations.**

**a.** Licensee shall not make, nor suffer to be made, alterations or improvements to the License Area (including the installation of any trade fixtures affixed to the License Area or whose removal will cause injury to the License Area) without the prior written consent of Port. Without limiting the foregoing, Licensee shall not make, nor cause or suffer to be made, any alterations or improvements to the License Area until Licensee shall have procured and paid for all regulatory approvals required to be obtained for such alterations and improvements, including, but not limited to, any building or similar permits required by Port in the exercise of its jurisdiction with respect to the License Area.

**b. Improvements Part of Realty**. All alterations or improvements to the License Area made by or on behalf of Licensee which may not be removed without substantial injury to the License Area shall become part of the realty immediately upon completion, shall be owned by Port and shall, at the end of the term hereof, remain in the License Area without compensation to Licensee, unless Port first waives its right to the alterations or improvements in writing. Notwithstanding the foregoing, Port at its option, may require Licensee to remove any alterations and improvements at Licensee's sole expense regardless of whether title has or has not vested in Port, and regardless of whether consent was, or was not given. Licensee shall repair any damage occasioned by such removal at Licensee's sole cost and expense.

**18. Suitability; Acceptance**. Licensee acknowledges that Port has made no representations or warranties concerning the License Area, including without limitation, the seismological condition thereof. By taking possession of the License Area, Licensee shall be deemed to have inspected the License Area and accepted the License Area in an "As-Is" condition and as being suitable for the conduct of Licensee's activity thereon.

**19. Surrender**. Upon termination of this License, Licensee shall surrender to Port the License Area and all improvements thereon in good condition (except for ordinary wear and tear) except for improvements and alterations which Licensee has the right to remove or is obligated to remove under the provisions of this License. On or before the termination date hereof, Licensee shall remove all of its personal property and shall perform all restoration made necessary by the removal of any improvements, alterations or Licensee's personal property.

Port may elect to retain or dispose of any improvements or Licensee's personal property which Licensee does not remove from the License Area as allowed or required by this License by giving at least ten (10) days' prior written notice of such election to Licensee. Licensee waives all claims against Port for any damage to Licensee resulting from Port's retention or disposition of any improvements, alterations or Licensee's personal property. Licensee shall be liable to Port for all costs incurred by Port for storing, removing or disposing of any improvements, alterations or Licensee's personal property.

If Licensee fails to surrender the License Area as required by this section, Licensee shall hold Port harmless from all damages resulting from Licensee's failure to surrender the License Area, including, but

not limited to, claims made by a succeeding licensee or Licensee resulting from Licensee's failure to surrender the License Area.

**20. Attorney's Fees.**

**a. Litigation Expenses**. If either party hereto brings an action or proceeding (including any cross-complaint or counterclaim) against the other party by reason of a default, or otherwise arising out of this License, the prevailing party in such action or proceeding shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to, reasonable attorneys' fees, which fees shall be payable whether or not such action is prosecuted to judgment. "Prevailing party" within the meaning of this section shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other party of its claim or defense.

**b. Appeals**. Attorneys' fees under this section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

**c. City Attorney**. For purposes of this License, reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the Bar of any State) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

**21. Mineral Reservation**. The State of California, pursuant to Section 2 of Chapter 1333 of the Statutes of 1968, as amended, has reserved all subsurface mineral deposits, including oil and gas deposits, on or underlying the License Area. In accordance with the provisions of said Statutes, Port and Licensee shall and hereby do grant to the State of California the right to explore, drill for and extract said subsurface minerals, including oil and gas deposits, from the Mineral Reservation area located by the California Grid System as more particularly described in the Basic License Information.

**22. Time is of the Essence**. Time is of the essence as to each and every provision of this License.

**23. City Requirements.**

a **Non-Discrimination.**

**Non Discrimination in City Contracts and Benefits Ordinance.**

(a) Covenant Not to Discriminate. In the performance of this License, Licensee covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Licensee, in any of Licensee's operations within the United States or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Licensee.

(b) SubLicenses and Other Subcontracts. Licensee shall include in all SubLicenses and other subcontracts relating to the Premises a non-discrimination clause applicable to such SubLicensee or other subcontractor in substantially the form of subsection (a) above. In addition, Licensee shall incorporate by reference in all SubLicenses and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c-k) and 12C.3 of the San Francisco Administrative Code and shall require all SubLicensees and other subcontractors to comply such provisions. Licensee's failure to comply with the obligations in this subsection shall constitute a material breach of this License.

(c) Non-Discrimination in Benefits. Licensee does not as of the date of this License and will not during the Term, in any of its operations within the United States, discriminate in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12.2(b) of the San Francisco Administrative Code.

(d) Condition to License. As a condition to the effectiveness of this License, Licensee shall execute and deliver to Port the "Nondiscrimination in contracts and Benefits" form approved by the San Francisco Human Rights Commission.

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the License of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Licensee shall comply fully with and be bound by all of the provisions that apply to this License under such Chapters of the Administrative Code, including but not

limited to the remedies provided in such Chapters. Without limiting the foregoing, Licensee understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of $50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this License may be assessed against Licensee and/or deducted from any payments due Licensee.

**b. MacBride Principles-Northern Ireland**. City urges companies doing business in Northern Ireland to move towards resolving employment inequities and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

**c. Tropical Hardwood Ban**. City urges Licensee not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood product.

**d. Tobacco Products Advertising Ban**. Licensee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the License Area. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

**e. Pesticide Prohibition**. Licensee shall comply with the provisions of Section 39.9 of Chapter 39 of the San Francisco Administrative Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Licensee to submit to Port an integrated pest management ("IPM") plan that (A) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Licensee may need to apply to the Premises during the Term of this License, (B) describes the steps Licensee will take to meet the City's IPM Policy described in section 39.1 of the Pesticide Ordinance and (C) identifies, by name, title, address and telephone number, an individual to act as the Licensee's primary IPM contact person with the City. In addition, Licensee shall comply with the requirements of Sections 39.4(a) and 39.4(b) of the Pesticide Ordinance as of January 1, 1999 and January 1, 2000, respectively.

Through Port, Licensee may seek a determination from the City's Commission on the Environment that Licensee is exempt from complying with certain portions of the Pesticide Ordinance with respect to this License, as provided in Section 39.8 of the Pesticide Ordinance. Port shall reasonably cooperate with Licensee if Licensee seeks in good faith an exemption under the Pesticide Ordinance, provided that Port shall have no obligation to make expenditures or incur expenses other than administrative expenses.

**f. First Source Hiring.**

The City has adopted a First Source Hiring Ordinance (San Francisco Administrative Code §83.1 et. seq.) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry-level positions. Pursuant to §83.7(b) of the First Source Hiring Ordinance, the Port Commission has adopted a First Source Hiring Implementation and Monitoring Plan ("Port Plan") subject to approval by the First Source Hiring Administration. Tenant acknowledges receiving and reviewing the First Source Hiring Ordinance. Under Section 83.9(d) of the first Source Hiring Ordinance, compliance by an employer with the Port Plan is deemed to be compliance with the provisions of the First Source Hiring Ordinance.

Based on the foregoing Tenant agrees to comply with the Port Plan through compliance with all of the following measures:

(a) Tenant shall notify the City and County of San Francisco's Workforce Development System, Department of Human Services of all projected Entry Level Positions and the approximate date such positions will be available, by using the ***Job Survey Form*** provided by the Port of San Francisco. The Port will also provide the Tenant with a detailed instruction sheet summarizing the procedure for the commencement of the lease. Tenant shall return the ***Job Survey Form*** to the Port within 30 days after execution of the lease by the Port and Tenant.

For purposes of this Agreement the terms "Entry Level Position", "San Francisco Workforce Development System", "Qualified Economically Disadvantaged Individual", and "First Source Hiring

Agreement" shall have the meaning provided in Section 83.4 of the San Francisco Administrative Code.

Tenant shall notify the San Francisco Workforce Development System of all vacancies for existing or new Entry Level Positions on the premise, during the lease term, and shall offer the San Francisco Workforce Development System the first opportunity to provide Qualified Economically Disadvantaged Individuals for employment in these positions.

(b) Tenant shall not publicize or otherwise post such vacancies until the San Francisco Workforce Development System refers Qualified Economically disadvantaged Individuals for employment in these positions or notifies Tenant that no Qualified Economically Disadvantaged Individuals are available for the particular vacancies. The San Francisco Workforce Development System shall respond to Tenant within ten (10) business days. After 10 business days, if the San Francisco Workforce Development System does not refer applicants, Tenant can advertise and fill Entry Level Positions outside of the City referral system.

(c) Tenant shall interview qualified applicants and use good faith in hiring applicants. Tenant shall maintain good records of recruitment and hiring process, and shall permit Port or City to audit such records upon request.

Pursuant to Section 83.10 of the Ordinance, if upon administrative review, it is determined that Entry Level positions were not made available to the San Francisco Workforce Development system for referral of Qualified Economically Disadvantaged Individuals, and the Employer does not remedy the violations, the Employer shall be assessed a penalty in the amount of $2,070 for every new hire for an Entry Level Position improperly withheld from the First Source Hiring process.

**g. Requiring Health Benefits for Covered Employees.**

Unless exempt, Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q (Chapter 12Q), including the implementing regulations as the same may be amended or updated from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth herein. The text of the HCAO is currently available on the web at www.ci.sf.ca.us\HCAO. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee Tenant shall provide the appropriate health benefit set forth in Section 12Q.3.

(b) Notwithstanding the above, if Tenant meets the requirements of a "small business" by the City pursuant to Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) Tenant understands and agrees that the failure to comply with the requirements of the HCAO shall constitute a material breach by Tenant of this Lease

(d) If, within 30 days after receiving written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(e) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify the Purchasing Department when it enters into such a Sublease or Contract and shall certify to the Purchasing Department that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with such Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO for each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that the Contracting Department has first provided Tenant with notice and an opportunity to cure the violation.

(f) Tenant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(g) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(h) Tenant shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(i) Upon request, Tenant shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subtenants, Contractors, and Subcontractors.

(j) Within five (5) business days of any request, Tenant shall provide the City with access to pertinent records relating to any Tenant's compliance with the HCAO. In addition, the City and its agents may conduct random audits of Tenant at any time during the term of this Lease. Tenant agrees to cooperate with City in connection with any such audit.

(k) If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the City or relating to City-owned property is less than $25,000 (or $50,000 for nonprofits) in that fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed $75,000 in that fiscal year, then all of the Contractor's or Subcontractor's contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed $75,000 in the fiscal year.

**24. Waiver of Relocation.**

Tenant hereby waives any and all rights, benefits or privileges of the California Relocation Assistance Law, California Government Code §7260 et seq., and the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §4601 et seq., or under any similar law, statute or ordinance now or hereafter in effect.

**25. Miscellaneous Provisions.**

**a. California Law**. This License shall be construed and interpreted in accordance with the Laws of the State of California and City's Charter.

**b. Entire Agreement**. This License contains all of the representations and the entire agreement between the parties with respect to the subject matter of this agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to such subject matter are superseded in total by this License. No prior drafts of this License or changes from those drafts to the executed version of this License shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this License.

**c. Amendments**. No amendment of this License or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

**d. Severability**. Except as is otherwise specifically provided for in this License, invalidation of any provision of this License, or of its application to any person, by judgment or court order, shall not affect any other provision of this License or its application to any other person or circumstance, and the remaining portions of this License shall continue in full force and effect, unless enforcement of this License as invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purposes of this License.

**e. No Party Drafter; Captions**. The provisions of this License shall be construed as a whole according to their common meaning and not strictly for or against any party in order to achieve the objectives and purposes of the parties. Any caption preceding the text of any section, paragraph or subsection or in the table of contents is included only for convenience of reference and shall be disregarded in the construction and interpretation of this License.

**f. Singular, Plural, Gender**. Whenever required by the context, the singular shall include the

plural and vice versa, and the masculine gender shall include the feminine or neuter genders, and vice versa.

g. **Successors**. The terms, covenants, agreements and conditions set forth in this License shall bind and inure to the benefit of Port and Licensee and, except as otherwise provided herein, their personal representatives and successors and assigns.

h. **Counterparts**. For convenience, the signatures of the parties to this License may be executed and acknowledged on separate pages which, when attached to this License, shall constitute this as one complete License. This License may be executed in any number of counterparts each of which shall be deemed to be an original and all of which shall constitute one and the same License.

i. **Waiver**. No failure by Port to insist upon the strict performance of any obligation of Licensee under this License or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial License fees during the continuance of any such breach shall constitute a waiver of such breach or of Port's rights to demand strict compliance with such term, covenant or condition. Port's consent to or approval of any act by Licensee requiring Port's consent or approval shall not be deemed to waive or render unnecessary Port's consent to or approval of any subsequent act by Licensee. Any waiver by Port of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this License.

j. **Authority**. Each of the persons signing this License on behalf of the Licensee does hereby covenant and warrant that Licensee has full right and authority to enter into this License, and that each and all of the persons signing on behalf of the Licensee are authorized to do so.

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**IN WITNESS WHEREOF, PORT and Licensee execute this License at San Francisco, California, as of the last date set forth below**

**LICENSEE**

**BILL GRAHAM ENTERPRISES, INC.**

| | |
|---|---|
| By______________________________ | By______________________________ |
| Its______________________________ | Its______________________________ |
| Date_____________________________ | Date_____________________________ |

**PORT**

**CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION**

By______________________________
Kenneth E. Winters
Director, Real Estate Division

Date:___________________________

**APPROVED AS TO FORM:**
DENNIS J. HERRERA, City Attorney

By______________________________

Date:___________________________

License Prepared by: Joyce B. Chan, Leasing Manager_____________(initial)

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# SAN FRANCISCO
# PORT COMMISSION

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## DECEMBER 16, 2003
## MINUTES OF THE MEETING

**MEMBERS, PORT COMMISSION**

HON. MICHAEL HARDEMAN, PRESIDENT
HON. KIMBERLY BRANDON, VICE PRESIDENT
HON. MICHELA ALIOTO-PIER
HON. SUE BIERMAN
HON. WILFRED HSU

**DOUGLAS F. WONG, EXECUTIVE DIRECTOR**

# CITY & COUNTY OF SAN FRANCISCO
# PORT COMMISSION

## MINUTES OF THE SPECIAL MEETING
## DECEMBER 16, 2003

### 1. ROLL CALL

Commission President Michael Hardeman called the meeting to order at 3:10 p.m. The following Commissioners were present: Michael Hardeman, Kimberly Brandon, Michela Alioto-Pier, Sue Bierman and Wilfred Hsu.

### 2. APPROVAL OF MINUTES - November 18, 2003 Meeting

ACTION: Commissioner Brandon moved approval; Commissioner Alioto-Pier seconded the motion. All of the Commissioners were in favor; the minutes of November 18, 2003 meeting were adopted.

### 3. EXECUTIVE

A. Executive Director's Report. Mr. Joel Robinson was sitting in for the Executive Director, who was out ill. He reported the following:

- James R. Herman Cruise Terminal Groundbreaking Ceremony
  On Wednesday, December 17th, the Mayor, the Port and the Cruise Terminal LLC will celebrate the commencement of the Bryant Street Piers and the James R. Herman Cruise Terminal project. The ceremony will begin at 4 p.m. at Piers 30-32. A reception at Delancey Street Restaurant will immediately follow the ceremony.

- Port Security Update
  Earlier this month, the Port received the final written report of the security vulnerability assessment from its consultant, Parsons Brinckerhoff, thus concluding this project, which was funded through a grant from the Transportation Security Administration (TSA). The PB project manager, Admiral David Spade, briefed the Port Commission on August 26th as to the findings and recommendations contained in the report. Port staff will use this information for ongoing security management and to prepare the Facility Security Plans required by the Coast Guard. The Port and its tenants that operate facilities and vessels subject to the new Maritime Security regulations must submit plans to the Coast Guard by December 31st. The Port of San Francisco received another security grant in Round 3 of the TSA Port Security Grant Program. On December 10th, Homeland Security Secretary Tom Ridge announced that a total of $179 million was awarded to 442 projects in 326 locations to 235 applicant organizations from across the nation. The Port of San Francisco received $450,000 for new fencing, gates, improved lighting, cameras, and a new guard station at the Pier 80 cargo terminal. Other Port tenants receiving Round 3 grant awards were Blue & Gold Fleet, Hornblower Cruises & Events, and Metropolitan Stevedore Company.

- Acknowledgement for Mayor Willie L. Brown, Jr.
  Commissioner Hardeman read the proclamation of appreciation for Mayor Brown for all his efforts in revitalizing the Port. The Port Commission declares and expresses its heartfelt thanks and appreciation to Mayor Brown by awarding him the highest commendation of esteem, the Maritime Order of Merit. The Commission will present the proclamation to the Mayor tomorrow afternoon.

## 4. CONSENT

A. Request for Port Commission Ratification of a Sublease Agreement between TJ of Nevada, LLC and DC Seafood Corporation at Pier 45, Shed D, Space D-7. (Resolution No. 03-75).

ACTION: Commissioner Brandon moved approval; Commissioner Alioto-Pier seconded the motion. All of the Commissioners were in favor; Resolution No. 03-75 was adopted.

## 5. PLANNING AND DEVELOPMENT

A. Request for approval of resolution dedicating Pier 14 Public Pier in honor of former Mayor Art Agnos. (Resolution No. 03-76)

Mr. Dan Hodapp, Planning & Development, indicated that a few months ago, the Mayor's office contacted the Port regarding a desire to dedicate the now under construction Pier 14 Public Pier to former Mayor Art Agnos. Pier 14 will be the Port's next landmark public access facility located south of the Agriculture Building. It sits atop a required breakwater for the downtown ferry terminal and stretches 650 feet out into the bay. From the pier, visitors will be able to enjoy unparalleled views of the Bay Bridge, the City's skyline and the downtown ferry terminal activity. The Port and the City of San Francisco owe a lot to former Mayor Art Agnos. Following the 1989 earthquake, he took the somewhat unpopular position that the Embarcadero must come down if the waterfront was going to reunite with the City. He lobbied hard for its removal and replacement with the surface roadway option. Through this, Mayor Agnos's vision and leadership, the ever important step was accomplished of removing the freeway in 1991. The resolution before the Commission was proposed by Mayor Brown's office to dedicate Pier 14 to former Mayor Art Agnos. An interpretative pylon marker will be located along the Embarcadero promenade describing the accomplishments and contributions of former Mayor Art Agnos. A formal celebration will be done at the pier following the next phase of construction. Phase 1 has been completed. Phase 2 will commence soon. He asked the Commission to approve the resolution dedicating the Pier 14 Public Pier in honor of Mayor Art Agnos for its service to the people of San Francisco, his leadership that made San Francisco a better City than he found it and demolishing the Embarcadero double decker freeway that walled off San Francisco from its beautiful waterfront.

Commissioner Bierman indicated that there were a lot of people who wanted the freeway to continue and Mr. Agnos took a lot of heat from businesses about taking it down. He showed strong leadership and vision that was a barrier to the Port and to the citizens. He had a vision of a boulevard of people being able to see things and not have to look at an ugly structure.

ACTION: Commissioner Bierman moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; Resolution No. 03-76 was adopted.

## 6. ENGINEERING & MAINTENANCE

A. Request for approval of contract modification to Contract No. 2679, "Downtown Ferry Terminal Public Pier" for an amount not-to-exceed $193,000. (Resolution No. 03-71)

Ms. Mojgan Yousefkhan, Project Manager, asked the Commission to authorize a contract modification to the existing construction contract with Dutra Construction, Inc. This is part of the Downtown Ferry Terminal project which was completed in 2001. As a condition of the BCDC permit for that project, the Port was obligated to provide public access by finishing the top of the breakwater with public pedestrian improvement. Due to the lack of full funding and various types of construction involved, staff decided to divide the project into three phases. The first phase was the connection of an extension between the breakwater and the Embarcadero promenade that Dutra completed on December 1, 2003. The scope of work for the second phase involves the installation of the new guardrail along the new concrete deck, new portal and roll up door at the pier entrance. Staff recommends a contract modification to include Phase 2 work to the existing construction contract with Dutra to protect public safety. Staff believes that this approach is cost effective because Dutra is already mobilized, thereby avoiding additional mobilization, insurance and administrative costs. Staff has successfully completed a negotiation process with Dutra to complete the work by March 2004 for a cost not to exceed $193,000. The third phase which will be awarded upon completion of funding would be the installation of a new guardrail, signs and benches along the pier. When this phase is complete, the pier would be accessible to the public.

Commissioner Brandon asked how much was allocated for Phase 2 in the original contract and how much money will the Port save for on this contract modification. Ms. Yousefkhan replied that staff did not allocate any money for Phase 2; all is additional work. Work done under Phase 1 was awarded $1,127,000 plus 10% contingency. Ms. Yousefkhan replied that the Port will be saving the cost of mobilization, insurance and administrative costs but does not have the figure to present.

Commissioner Brandon noted that the staff report and the resolution state that Dutra will complete the work on December 1, 2004. Ms. Yousefkhan stated that it was a typographical error. The work was actually completed on December 1, 2003. If the Commission approves this contract today, staff plans to issue the Notice to Proceed for the second phase by the end of this month. The contractor will complete that phase by March 2004.

Commissioner Hsu asked when Phase 3 is scheduled to commence. Ms. Yousefkhan replied that Phase 3 will commence as soon as the funding process is completed. The cost for Phase 3 is approximately $900,000. The Port has $400,000 in available funds. Staff submitted a grant application for the remaining $500,000. The result of the application will be released in spring 2004. When the funds are in place, staff can prepare the construction contract and issue competitive bids. She expects that Phase 3 will commence in summer 2004.

Commissioner Alioto-Pier indicated that Phase 1 cost $1.127 million; Phase 2 cost $190,000; and Phase 3 is of $900,000. She asked where the money for Phase 2 was coming from. Ms. Yousefkhan replied that $30,000 will come from the Coastal Conservancy grant. Capital funds available from the Downtown Ferry Terminal project are also available for this project. Commissioner Alioto-Pier remarked that the money has been earmarked for this project.

Commissioner Brandon noted that the date of completion should have been December 2003, not December 2004 and made that amendment for the staff report and resolution.

ACTION: Commissioner Brandon moved approval as amended; Commissioner Alioto-Pier seconded the motion. All of the Commissioners were in favor; Resolution No. 03-71 was adopted.

B. Request for adoption of the Port of San Francisco's Unreinforced Masonry Bearing Wall Building Seismic Mitigation Program. (Resolution No. 03-72)

Mr. Ed Byrne, Sr. Civil Engineer, indicated he will be presenting the reasons that the program is required, the details of the program and staff's recommendation. Lynda Swanson from the Planning Department will be presenting the historical significance of the buildings, mothballing the buildings, and the Port's plans to find funding to upgrade the buildings.

Mr. Byrne indicated that Unreinforced Masonry Buildings (UMB) have historically been a problem. The fact has been demonstrated in past California earthquakes that this type of construction simply collapses and it does not behave very well in earthquakes. State law and a San Francisco ordinance require owners of UMBs to take reasonable measures to address the potentially hazardous conditions created by these structures. The Port has two buildings that qualify as UMBs, Building 104 and Building 113-114, both located on 20th Street at Pier 70. The Port is not subjected to the City's UMB Ordinance and may independently comply with State Law by adopting its own UMB mitigation program. Port staff has developed the Port of San Francisco's Unreinforced Masonry Bearing Wall Building Seismic Mitigation Program. The purpose of the program is intended to set the minimum requirements for vacating, barricading and securing the Port's UMBs. This program also sets the timetable for the UMB building strengthening and establishes minimum seismic resistance repair requirements. Phase 1 of the Program Implementation Schedule is to vacate the buildings. The buildings should be vacated by January 31, 2004. Phase 2, Sealing and Barricading of the Structures, will reasonably prevent unlawful entry and protect the public from the hazards related to the buildings. As part of this phase, a ten-year plan for documenting the structure condition and monitoring the security of these buildings must be submitted. The deadline is March 30, 2004. Phase 3, carry out a more extensive mothballing and documenting program to be done February –August 2004. Phase 4 is to implement the 10-year plan. A UMB annual staff report for each of the Port's UMBs will include status report on the development and funding opportunities, overall structural condition of the buildings and the surrounding barricade system, a summary of the security monitoring program and a status report which may include some recommendations concerning modifications to the structure or the surrounding barricades or modifications to the security. If funds are obtained, strengthening and renovation plans

will be submitted for building permit. If however, during this time, staff determines that public safety as it relates to one or both of the buildings cannot be maintained, an emergency report will be made to the Commission to obtain approval for demolition or other remedial action. Phase 5, Complete Structural Alterations or Demolition. Complete one of the two actions: (a) Seismically retrofit the buildings; or (b) demolish the buildings. The Port Commission shall have the sole authority to authorize an extension of the deadline for Phase 5. Phase 5 deadline is March 30, 2014.

Mr. Byrne requested the Commission to adopt the UMB Seismic Mitigation Program to deal with the Port's unsafe conditions with the understanding that the Port Commission also directs staff to draft a Port Building Code which will incorporate the Port's UMB Program, to continue to follow all other sections of the S.F. Building Code until the Port's Building Code is adopted, to notify all regulatory agencies as required of the Port's adoption of the UMB Program and to find the necessary funding to seismically upgrade the buildings to comply with the program.

Mr. Byrne showed the Commission a drawing of the buildings. The buildings are completely encircled with other structures or barricades and should deter people from entering the buildings. He showed the Commission the safety fence detail which consists of k-rail concrete base. A cyclone fence will allow security guards monitoring the area to see through and observe the buildings. Staff is planning to put plywood enclosures over the opening in the buildings up to a height of 8 feet. There will also be points of entry at certain locations; one per building. The security monitoring of the building will be obtained through a combination of motion detectors that will notify Port security guards if there's any motion detected around the building and strategically placed exterior lights to open up the peripheral area around the buildings.

Commissioner Alioto-Pier asked if the demolition of the buildings can be put off indeterminately. Mr. Byrne replied affirmatively. Commissioner Alioto-Pier asked if signs will be posted to alert people from entering the building. Mr. Byrne replied that staff will post signs indicating that the buildings are unsafe and that they should not cross the barricades. Commissioner Alioto-Pier asked if there are any barbwires on top of the fence. Mr. Byrne replied that they were not planning on installing barbwires. The barricades, the tall fence, the plywood on the buildings should suffice. If an intruder should get passed those, the motion detector will go off. Staff feels that the buildings will be secured.

Commissioner Alioto-Pier asked if staff feels confident that the security measures put in place will deter intruders from going over the fence. Mr. Byrne replied that an agile person could get over the fence but he believes that it would a deterrent. The next line of defense is the wall of the building and the plywood is secure but they're not going to keep anybody out who is determined to go in. The motion detector should help and a security guard will be monitoring the buildings daily.

Commissioner Alioto-Pier asked about the cost of the fence. Mr. Byrne replied that he does not have the cost for the whole system but the k-rail and security cost approximately $100,000.

Ms. Lynda Swanson, Planning & Development, indicated that her focus of work consists

of a mothballing program. As Mr. Byrne explained, there is an initial phase which consists of fencing, putting up plywood and patrolling including motion detectors inside the buildings. She noted that across the street from 113-114, the San Francisco Drydock will continue to be functioning and having eyes on the site both at 113-114 and Bldg. 104 which would be helpful to the security of the property. The mothballing program, however, is a different phase. It requires the Port to take a hard look of the Department of the Interior's requirements for buildings of this caliber. These buildings are over a hundred years old. They represent an enormous variety of activity starting with the shipyard activity, building some of the ships that took part of the Spanish-American War. Some of them were involved in building the fleet for Japan which did not have any shipbuilding activities at the time, continuing on through the period of development of California when mining equipment was built here, down to the most recent large construction which is the Bart tunnels that were built inside Bldg. 113-114. The buildings are beautiful and have extremely handsome architecture, full of labor history and other sources of San Francisco local history and also important for the National History of how the West was developed. These are high quality buildings. There's a lot of concern about closing and securing the buildings as well as a lot of support for the Port continuing to raise funds to save them. Building 113-114, the Union Ironworks, was built around 1886. Across the street, built ten years later was the administration building for the Union Ironworks. Both of those are contained in the program and both will be fenced, will have plywood and will be secured. An example of the problem staff is faced with is the failing bricks. The brick extends about 10 inches deep. Some of the brick has fallen off on the eastern side of the wall. The foundation is deteriorated, windows are coming apart, and water intrusion is affecting the interior and exterior of the buildings. Staff needs to document fully and record visually what these buildings are in the event of fire, earthquake or other tragedies. It needs to be done according to the requirements of the Historic American Building Survey. A condition assessment needs to be prepared. Port Maintenance staff will be stabilizing the building to reduce water intrusion. Port staff will be controlling the buildings against vandalism and vicissitudes of nature. They will immediately videotape the building while the drydock is still in the building, since their presence, their functions, and their equipment are part of the historic use of the building. The Maritime Museum archives already contain tremendous amount of information about the Pier 70 site and these buildings in particular. They are willing to help the Port work through the building, surveying it and pick up documents that can be added to the archives. Staff will be writing a Memorandum of Understanding between the Port and the Maritime Museum and will be obtaining bids to conduct these surveys. The purpose of the survey is to avoid the loss of information, photo-document the buildings, prepare detailed chronology including the most recent, organize records and update inventory. Meanwhile and continuing into the future, the Port will, as was done in the past, continue to seek grants, matched by Port funds. Staff will be seeking a public/private mixed-use development opportunity should they present themselves and long-term if staff is unable to raise the funds and if the public safety is in question, demolition is an option. Overall, staff believes that this approach mitigates the risks that people will otherwise face from these buildings. It gives the Port ten years to seek the funds and to try to prevent the deterioration during this period and to meet the highest standards of historic preservation for these buildings.

Commissioner Bierman remarked that it is reassuring to know about the care that Port

staff is undertaking for these important and historic buildings on the waterfront.

Ms. Swanson indicated that the Engineering Department has been able to secure funding for its activities and the Maintenance Department will be helping as well. Staff is trying to secure the full funding. By reallocating funds from Planning & Development with the assistance of the Maritime Division, they would be able to cover the initial immediate steps.

Stephen Canright, Curator of the SF Maritime National Historical Park at Aquatic Park, speaking as a private citizen indicated that their park, an independent unit of the National Park Service, is prepared to cooperate with the Port in the initial stages of the documentation process. He has not been authorized to speak on behalf of the park. He has been aware of the union ironworks/Pier 70 site since his brother was on a ship that was repaired there in the 1960s. Walking by to join his ship, you could see the welding work in the interior, the vaulted windows of Bldg. 113. It's a magical site and it is a site that is certainly qualified to be in the national landmark historic district. He believes that it is the single most important maritime historical site in the West Coast. It was not only the first steel shipyard on the American West Coast but also the first steel shipyard in the Pacific Basin. At the time that the yard was built in 1880s, there were only two other yards in the United States capable of building a steel ship. It was established as a major, industrial site in the West Coast. The yard built all its own machinery. It got much of its material from the adjacent Pacific rolling mill, which was another pioneering industrial site. The only thing it imported from the East was steel plate. The machinery at the site was all labeled union ironworks. It was the largest employer in San Francisco for many years from the late 1880s through the 1890s. It was the first real industrial scale business in this city. It contributed to the build-up of the American Navy in the Pacific leading to the successful Spanish-American War that built Dewey's flagship of Manila, the Olympia, which is preserved in Pennsylvania. It built the battleship Oregon, famous for its dashed around Cape Horn during that war. It was equally significant in civilian construction; more than half of its output was civilian vessels, from tugboats to pilot schooners to tankers. It built some of the earliest tankers on the West Coast to freighters to two World Wars and to the 1960s. The site is wonderfully preserved - both the machine shop building and the 1897 office building as well as the 1912 power house building and the administration building. In the floor of the machine shop building is a 6 x 6 redwood block flooring, vertical grain, which was the 19th century style of industrial flooring. It's an awe-inspiring sight. He requested the Commission to do everything in its power to see that they remain. He pointed out that as the development of the City moves down in that direction in 20 years, it will look like Ghirardelli Square South. It could certainly be developed eventually in a commercial fashion. He hopes that it can be developed at least in part as a cultural interest.

Charles Chase, Executive Director of SF Architectural Heritage, indicated he provided the Commission a copy of his letter in support of the adoption of the Port's UMB Mitigation Program. They are very much aware that what is before the Commission deals with some of the most historic resources in all of San Francisco's maritime industrial waterfront. They also recognize that there is a need to create a program that extends the span of opportunity for the redevelopment and rehabilitation of these buildings as a part of the Pier 70 complex. They believe that the program before the Commission establishes

appropriate, protective measures for public health and safety as well as providing a wider margin of opportunity to seek development partners and funding sources for rehabilitation and the long-term protection of these unique maritime industrial resources. Heritage strongly encourages the Commission to enact the UMB Program for the Port's historic unreinforced masonry buildings. He urged the Commission to protect these buildings from further deterioration, securing these structures for future development through investment and protective measures stated in the Secretary's Interior Standards for Mothballing of Historic Resources and to continue to seek development partners to rehabilitate these buildings.

ACTION: Commissioner Brandon moved approval; Commissioner Alioto-Pier seconded the motion. All of the Commissioners were in favor; Resolution No. 03-72 was adopted.

## 7. REAL ESTATE

A. Request to authorize staff to issue a Request for Proposals (RFP) for the lease of the Roundhouse One Building located at the Embarcadero and Sansome Street. (Resolution No. 03-73)

Phil Williamson, Senior Property Manager, indicated that in 1982 the Port Commission awarded a 35-year lease to Westcap Heritage Investors. Westcap utilized the Federal Historic Rehabilitation Tax Credit to rehabilitate the National Register listed Roundhouse One building and the adjacent Sandhouse building and to construct a new four-story office building on the property. In 1997, Westcap defaulted and the Port terminated their lease. The Port now manages and leases the whole Roundhouse Plaza directly. In 1999, the Port Commission issued an RFP for the stand-alone Roundhouse building and awarded a 10-ten year lease to IN Radio LLC. IN Radio took possession of the building in the spring of 2000 and commenced construction of a $3.5 million remodel of the building for use as a satellite radio broadcast studios. Unfortunately, the tenant was not able to complete their project and the lease was eventually terminated in 2002. Port staff estimates that the tenant accomplished approximately 80% of the proposed improvements. Today, the Roundhouse building is vacant. Port staff recommends the issuance of an RFP for the lease, the build-out and the operation of the Roundhouse One building to accomplish the following objectives:

- To maximize port revenue;
- To provide for the interior renovation of the vacant facility in conformance with the Secretary of the Interior Standards for Rehabilitation;
- To provide building code upgrades and
- To provide a project consistent with the policies, standards, and design criteria in the Waterfront Plan and the Waterfront Design & Access Element in a manner compatible with the surrounding area and the neighborhood.

The following uses: general office, community facilities, and retail including restaurants or a combination of these uses are consistent with the Waterfront Plan and may be considered by the Port for inclusion in any proposal. The Port will assemble a team to evaluate the respondent's fulfillment of the stated selection criteria in the RFP including selecting the most qualified respondent who has a demonstrated ability to finance, design,

construct, maintain and operate the building while maximizing revenue to the Port. The Port will consider to the extent to which each proposed use promotes the public trust objectives set for the in the Burton Act and the Waterfront Land Use Plan. Substantial rehabilitation and waterfront development experience are desired. The selected respondent must successfully use the existing building for a use or uses that take full advantage of this spectacular location and help activate and enliven the waterfront. Finally, the selected respondent's proposal must be financially feasible and viable as determined by the adequacy of the projected revenues to support their investment and the reasonableness of the cashflow analysis they present.

Jeffrey Bauer, Senior Leasing Manager, indicated that the terms of the lease that will be negotiated by Port staff are subject to the final approval of the Port Commission and the Board of Supervisors. The Port is requiring respondents to propose base rent comparable to like situations in the market. Rent adjustments must also be proposed. A period of rent abatement for construction may be included in the proposal. If a component of the proposal is a percentage rent, that percentage rent must be on gross sales of food, beverage and merchandise. The percentage rent should be comparable to those in like situations in the market. The proposals must also include an initial term plus an option period, if any, based on the cost of the tenant improvements in comparable situations in the market. Proposals must include an estimated cost of proposed tenant improvements, a description of same, and a schedule for their completion. Security for performance – the lease will require the tenant to pose a construction performance bond, a letter of credit and other security satisfactory to the Port for a lien-free completion of the proposed improvements. Historic preservation – the lease will require the tenant to comply with the Secretary of Interior's Standards for Historic Preservation for any renovation or alteration. Because the property is a designated City landmark, the tenant may also be required to secure a Certificate of Appropriateness from the San Francisco Planning Department or Planning Commission upon the advice and recommendation of the Landmarks Board for exterior alterations. Exclusive Right to Negotiate – Staff selects a respondent with Port Commission consent. Staff will enter into an exclusive right to negotiate agreement. During the term, Port staff will negotiate a lease with a selected respondent based on the Port's standard lease format. The respondent must submit a $25,000 non-refundable fee for the two-month negotiation period. If staff comes to term with the selected respondent, a lease agreement and related documents incorporating specific terms which are not limited to but include the Port and lessee's responsibilities, the economic parameters, renovation standards and requirements and a performance schedule. The final lease would be pending Port Commission, Board of Supervisors and other regulatory approvals. Marketing – Port staff budgeted $18,000 for the marketing of the RFP including ads in the Wall Street Journal and 12 diverse local periodicals. If authorized, Port staff will proceed with the solicitation process according to the following schedule:

Issuance of the RFP: December 17, 2003
First Pre-proposal conference and site tour: March 3, 2004
Submittal of Proposals Due: April 28, 2004
Staff review & evaluation of proposals and interviews: April 29 –May 29, 2004
Staff recommendation to Commission regarding Exclusive Negotiations: June 8, 2004
Exclusive Negotiation Period: June 9 – August 29, 2004

Staff requests that the Port Commission authorize the executive director or his representative to issue a Request for Proposals for the lease of Roundhouse 1 located at 1500 Sansome Street.

Commissioner Alioto-Pier asked what the building is being used for since it was vacated in 2002 and why it took so long for staff to bring this item to the Commission. Mr. Bauer replied that the building has been vacant since 2002. There was a lengthy legal process to recapture the property for the Port to regain title.

Stewart Morton, Northeast Waterfront Advisory Committee, indicated that the community is concerned about what the RFP might do to the landmark status of the Roundhouse building. Mr. Bauer replied that the Roundhouse being 20,000 s.f. is considered a significant business opportunity that should be put to bid under the City Charter. The RFP program is used as a marketing tool to advertise and put it out in the market. The Port has a large advertising budget for this project. The RFP states that the Roundhouse Building has a landmark status and alterations both interior and exterior will need to be reviewed and any substantial changes will not be permitted to the building. The goal is to find a creditworthy tenant to rehabilitate and maintain the historic architectural character of the building.

ACTION: Commissioner Brandon moved approval; Commissioner Alioto-Pier seconded the motion. All of the Commissioners were in favor; Resolution No. 03-73 was adopted.

B. Request for approval of 2003 Licensing Agreement for New Year's Eve. (Resolution No. 03-74)

Mr. Jeff Bauer, Senior Leasing Manager, indicated that since 1999, the City of San Francisco has held a City sponsored New Year's Eve celebration on Port property. The event has been produced by Bill Graham Presents. The City again has requested use of Port property for the annual event on December 31st. This free event will be held in the area south of the Agriculture Building. The event will begin at 10 p.m. and it will run no later than 1 a.m. Activities include DJ music followed by fireworks display at midnight from several barges along the bay south of the Ferry Building. There will be no food or beverages available for purchase at the event. The San Francisco Police Department will aggressively be enforcing against the consumption of alcoholic beverages in public places. To balance between the pedestrian traffic, the event and the need to maintain traffic flow along Embarcadero, the SFPD combined with the Dept. of Parking and Traffic have developed a traffic plan that includes key detour traffic points.

Mr. Ken Winters, Director of Real Estate, indicated that what Mr. Bauer has put forth is the City's proposal for utilizing the Port property location for the New Year's Eve event and a recommendation from staff for the Commission to approve the License to Use Property including a waiver of license fees for this event.

Commissioner Brandon asked about the licensing fee. Mr. Bauer replied that the license fee is in the range of $500 - $1,000 and this represents the administrative fee that the Port normally charges for like-event. Commissioner Brandon asked who is going to pay for City services that the Port will be charged for. Mr. Bauer replied that as a landlord and an

owner, the Port is going to incur the normal expenses in securing its property; things that normally an owner would do if a large crowd were expected on the property. It was his understanding that the other cost of the event is approximately $250,000. He reiterated that this is not a Port event, it's a City event.

Mr. Winters reiterated that in the request put forth to Jeff Bauer and his team, there was no mention of the additional cost of $250,000. The items before the Commission for approval are the use of Port property and waiving the license fee. The financial matters of general fund allocations and how the balance of such services surrounding this event will be agreed upon will be discussed at a later time.

Commissioner Brandon indicated that those discussions need to take place before the Commission approves the license. If the Commission approves the license, it will be perceived that they are approving the event being held on Port property and as usual, the Port will pick up the $250,000 cost. The Port Commission does not intend to pay for the event this year since the Port already paid $2 million to the City.

Mr. Joel Robinson indicated that this would be the appropriate time to attach the terms in the licensing agreement that the Commission would like to see with regard to allowing the event to happen on Port property but not accepting responsibility of any of the cost related to the event. It should be included as an addendum or as a resolution clause to the actual licensing agreement. It would give the Port and the Commission protection from the City for paying the bill of $250,000 next year. The promoters will receive their licensing agreement with the understanding that the Port is not assuming the costs for police, fire and any other costs associated with the event.

Mr. Jeff Bauer indicated that he has an alternate resolution which states… "That in recognition of the substantial economic impact on Port property caused by the proposed New Year's Eve event including loss revenue from retail tenants and increased Port security and repair expenses, the Port approval of this license is based on the understanding that the Port shall not authorize expenditure of Port funds for any cost of incremental City services and/or third party expenses required to produce the event." In summary, the Port will waive the license to do the event but the Port will not incur the cost of the police, fireworks production, etc.

Commissioner Hardeman asked if there are any extraordinary cost that the Port would incur other than those mentioned. Mr. Bauer replied that all trash cans on the Embarcadero are removed so they don't become weapons to be thrown at the police or bystanders. Security guards are posted around the piers to keep mischief from happening inside the piers. The Port allows the police to use Pier 30/32 to stage. The benefit of having an event like this is having hundreds of police whose priority is to protect our property.

Commissioner Brandon asked if the Port needs extra security besides the police. Mr. Bauer replied that the Port has its own security. The mandate of the police is crowd control, not property protection. Therefore, the Port hires 15 security guards at a total cost of $3,000. They are posted at strategic piers to make sure that the doors are secured.

Commissioner Brandon indicated that a list of the Port's expenses and what it would cost

for the City to put on this event should be attached to the resolution for Commission's review and approval.

Commissioner Hardeman indicated that the Commission does not object to paying for its share but the Port has never paid $250,000 to the City before. To his knowledge, the Port has paid the City $150,000.

Mr. Bauer indicated that the New Year's Eve event used to be held in Union Square Plaza. It broke out into a riot. The geographic nature of that area is hard for the police to control. The police wanted to come down to the waterfront to get everyone in the City in one place so they can do crowd control. Since the event in 1999, we haven't had the riots and vandalism in Union Square. It's been effective and the Port has never paid for the event.

Commissioner Hardeman was referring to the expenses paid by the Port which were identified in the Nexus Study. Mr. Robinson replied that $250,000 is the documented cost that the Nexus Study determined was the legitimate cost for the event. The Port never paid anything.

Commissioner Hardeman commented that the Port is willing to cooperate with the City but the Port did not decide to have the party. The City decided to have the party and the Port will pay its reasonable share.

Commissioner Alioto-Pier indicated that she's in favor of paying for the Port's reasonable share.

In response to her inquiry regarding the geographic of the party, Mr. Bauer replied that the event will be located in the plaza under construction south of the Ferry Building. They will put up scaffolding and a DJ will play music. It's a place for people to gather during New Year's Eve. Approximately 100,000 people attend this event. There will be crowds from the Ferry Building to Pier 24. The Embarcadero roadway is closed.

Commissioner Alioto-Pier was curious why the Port doesn't ask the City to pay for the event and pay the Port a rental fee for the use of the property. She understands the idea of being generous and nice but this is where the Port generates its revenues. She's disturbed by the fact that we're nice about lending them the property for free and then being handed the bill for $250,000 after the event.

Mr. Bauer replied that he and his staff routinely propose event fees, per Ken Winters' direction. However, when a contract is sent for signature, somewhere along the way, the fee is never paid or has changed. Mr. Bauer indicated that the rental fee for this area costs approximately $2000. This fee is to basically recoup staff's time spent on preparing the documents.

Commissioner Alioto-Pier indicated that the Port should charge the City for recouping staff's time as well.

Commissioner Brandon indicated that the fee that Commissioner Alioto-Pier was referring to is the amount that the Port will have to pay the City to put on this event for the City.

Commissioner Alioto-Pier indicated that the waterfront is one of the Port's great assets. There are other events that are held at the Port such as Fleet Week, Fourth of July etc. that the Port does not have to pay. Mr. Bauer added that there are approximately 25-30 events held at the Port. The Port sponsors a couple of the events because of the revenues they generate for the Port.

Commissioner Alioto-Pier indicated that this is a moneymaking venture for the Port. When the City requests to use Port property, the Port should charge the City to rent the property since they are worried about crowd control in other parts of the City. She wants to ensure that the Port does not get charged for allowing the City to have the event on Port property.

Commissioner Bierman indicated that this is part of public service. Thousands of people come from all over to celebrate on the waterfront. She would hate to see the Port stand in the way of the celebration when the Port is part of the City government. She's not sure of the financing but she knows the value of the celebration. She does not know who else would pay for it. Commissioner Alioto-Pier replied that the City should pay for it. Mr. Bauer added that in the past the City has paid for it and on two occasions, corporations paid for the event.

Commissioner Hardeman asked what the corporate sponsorship was. Mr. Bauer replied that the cost for the event has escalated. This year the cost of the event including fireworks, police, and production is approximately $250,000.

Commissioner Bierman asked what the Port is worried about. Commissioner Hardeman replied that the Port may be required to pay the $250,000, the cost for the New Year's event, when in the past, corporate sponsors paid for the event. The Commission is concerned that by waiving the license fee, it might be perceived by the City that the Port is agreeing to pay for the $250,000 cost.

Mr. Bauer suggested that one alternative would be is to approve the license and then add a language into the license that clearly states that the Port will not pay for any associated costs such as the fireworks, the police, the fire, etc.

Commissioner Brandon asked if the Port paid anything in the past. Mr. Robinson replied that prior to FY 03/04, the Port has not paid anything. The results of the Nexus Study recommended the reasonable cost that the Port will have to pay for police and DPT for this event. There were no studies done prior to 03/04 so there was no cost to the Port. The Port was not billed for anything. The preliminary findings of the Nexus Study, which were presented to the Commission a month ago, revealed that the City could assign the Port actual costs to the police department for the New Year's Eve event. The City's opinion was based on the fact that the event occurred on Port property, therefore, the Port should pay for the cost of the event. Staff is comfortable with the Commission's decision to approve the City's request to hold the event at the Port, but the Port will not be held responsible or expected to pay for any other costs. It will, however, take more discussion and negotiation with the City and the promoter to accomplish Commissioner Alioto's goal of making a profit from this event. Staff's main concern at the moment is that the Port does not get billed or expected to pay for the event.

Commissioner Hsu asked if there was a way to approve the City's request but modify the resolution to clearly state that although the Port is allowing the City to hold the event at the Port, the event benefits the entire City and the Port should not have to pay for the event. The Port did not create the event; the Port is allowing the City to use its property. The Port is helping out the police department in their desire to have the event at the Port due to crowd control. The resolution should be amended to clearly state that in the next Nexus Study, the Port should not pay for this event. To revise the findings in the Nexus Study, the Port could argue that this event benefits the entire City, not just the Port. Obviously, security measures and staff time cost the Port about $5,000. He is amenable to waiving the $5,000 fee. He agreed with Commissioner Bierman's comments that the Port should not get in the way of the City's plans; however, it's not fair for the Port to pay for the cost of the event.

Jeff Bauer indicated that this is a police-sponsored event to divert what used to happen in downtown San Francisco. The security measures that the Port undertakes are what a property owner would normally do to protect its property.

Mr. Robinson indicated that it would be sufficient to put the City on notice that it is not the Port's intent to pay for any cost related to the event. The Commission has to approve any payment to the City as staff has done with the $2 million transfer to the City. The Port is allowing the City to have the event on Port property but the Commission will not approve any charges related to the event.

Commissioner Hsu suggested that the Port should notify the City that if it intends to charge the Port, they should not hold the event at the Port. If they hold the event at the Port, they will be liable for the charges.

Commissioner Hardeman asked if the Port paid for the 4th of July event. Mr. Bauer replied that the 4th of July event benefits the Fisherman's Wharf community. The Port contributed $25,000 even though staff expended time and effort to make properties available for the event. The Port paid for the fee realizing that the events will, in turn, generate higher percentage rent from parking lots, restaurants and retail tenants.

Commissioner Hardeman asked about the cost associated with the Black & White Ball. Mr. Bauer replied that the ball is no longer held at the Port. When it was held at the Port, it did not cost the Port any money.

Commissioner Hardeman commented that the Port contributed money to Fleet Week as it is similar to the 4th of July event. Mr. Bauer confirmed that the Fleet Week and 4th of July events draw thousands of people to Fisherman's Wharf and the events benefit the wharf community. There's not a lot of benefit to hold the New Year's Eve event at the Port.

Commissioner Hardeman indicated that Union Square never gave the City $250,000 to hold the event there.

Commissioner Alioto-Pier asked if the Port is included in the City's advertisement for the event. Mr. Bauer replied that the Port has been included minimally in the past. The Port's logo is shown on their advertisement.

After further discussions, Acting Director Joel Robinson read the amendment to the resolution. "Resolved, that in recognition of the substantial economic impact on Port property caused by the proposed New Year's Eve event, including lost income from retail tenants and increased Port security and repair expenses, the Port's approval of this License is based on an understanding that the Port Commission shall not authorize expenditure of Port funds for the cost of incremental City services or other third party expenses required by the proposed event."

Commissioner Alioto-Pier concurred with Commissioner Hsu's comments that if the City plans to hold the event on the waterfront, they should not do it if they are going to bill the Port.

Mr. Robinson indicated that the amendment gives the Commission enough protection that the Port would not be reasonably asked to pay for the event. They will get the licensing agreement with the understanding that the Commission will not approve funding for any incremental expenses.

Commissioner Bierman indicated that she's troubled by the amendment. The Police Department, as well as the Port, is a department of the City. This, in her view, is a very important event. She does not want the Port to look like it's trying to make money out of something that the police are trying to do for the public. The Port should be doing it for the public as well. Having been on the waterfront on New Year's Eve, it does not hurt the Port to spend a little money to have people have that good a time on the Port.

Commissioner Alioto-Pier agreed with Commissioner Bierman's comments but she does not want to be misled that the Port is not paying for anything and then find out later that the City is billing the Port for $250,000 for the event. She does not have a problem with the Port pitching in some money. She finds it disturbing that the Port might be billed for the event as presented in the Nexus Study because it was held on Port property. The Port has limited resources and is responsible for a lot of things. The Port should be afforded the flexibility of pitching in some money and not just being billed for the event that the City is responsible for organizing.

Mr. Robinson pointed out that currently the funding for the event is in the Police Department's budget because the event was held. The police department provided the police officers and the Dept. of Parking & Traffic provided the parking & traffic officers. The Port has not yet paid. If we pay them, it would be a reimbursement of what's already budgeted for the Police Dept. We're not hampering or impairing the Police Dept. at all. We're simply retaining the funds at the Port that the Nexus Study said we could legally pay in terms of this event. With this resolution, the Port is fairly protected by the statement that the Commission will not approve funding for incremental expenses. If they come back and charge the Port, the Commission will have to approve the fund transfer. At that time, the Commission will have the opportunity to approve or disapprove the request.

ACTION: Commissioner Brandon moved approval as amended; Commissioner Alioto-Pier seconded the motion. All of the Commissioners were in favor; Resolution No. 03-74 was adopted.

## 8. NEW BUSINESS/PUBLIC COMMENT

Melanie N. read a letter from Jon Golinger, Campaign Director for Citizens to Save the Waterfront regarding the Mills project. She understands that the Commission will be considering issues related to the Mills project in closed session as well as on January 13th. She wanted to make sure that the position of the Citizens to Save the Waterfront is clear. The letter states: "Citizens to Save the Waterfront is a coalition of neighborhood, local business, transit and environmental organizations working to protect and enhance the San Francisco waterfront. We hereby request that, if the Port Commission decides to renew the Mills Corporation's current Exclusive Right to Negotiate for Piers 27-31, that you do so for a period not to exceed 60 days from the January 13, 2004 ERN expiration date. While a diverse range of interests remains deeply concerned with the Mills Project as currently proposed, we and other community members have entered into a period of serious discussions with Mills to make significant improvements to the project. That discussion period will last until January 30th and we expect soon after that the Port Commission will want to re-evaluate the changed project for compliance with the RFP and Waterfront Land Use Plan. A 60-day extension is sufficient to allow such a review."

## 9. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

ACTION: Commissioner Brandon moved approval; Commissioner Alioto-Pier seconded the motion. All of the Commissioners were in favor.

The Commission Secretary announced that Items (f) and (i) under Real Estate Negotiations have been taken off the calendar.

At 4:45 p.m., the Commission withdrew to executive session to discuss the following:

B. CLOSED SESSION

(1) CONFERENCE WITH LEGAL COUNSEL REGARDING ANTICIPATED LITIGATION MATTERS (Discussion Items)

a. Discuss significant exposure to litigation pursuant to subdivision (b) of California Government Code Section 54956.9 (2 cases) (1 case as Defendant) (1 case as Plaintiff)

(2) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.
***This session is closed to any non-City/Port representative. ****

a. Property: Pier 70
Person Negotiating: Port: Byron Rhett, Planning & Development Director
*Exploratorium: Dr. Goéry Delacôte, Executive Director

b. Property: Pier 27-31
Person Negotiating: Port: Byron Rhett, Planning & Development Director
*The Mills Corporation: Steven J. Jacobsen, Executive Vice President

c. Property: Foreign Trade Zone Piers 19/23
Person Negotiating: Port: Peter Dailey, Maritime Director
*Big C Traders: Raymond Lynch

d. Property: Piers 45C
Person Negotiating: Port: Peter Dailey, Maritime Director
*National Liberty Ship Memorial (Jeremiah O'Brien): Rex Clack

e. Property: Pier 92
Person Negotiating: Port: Ken Winters, Real Estate Director
*Specialty Crushing: Tom Chasm

f. Property: Pier 48
Person Negotiating: Port: Ken Winters, Real Estate Director
*Prospective Bidder(s)
**This Item was taken off the calendar.**

g. Property: Pier 45A
Person Negotiating: Port: Ken Winters, Real Estate Director
*San Francisco Museum and Historical Society: James Lazarus

h. Property: 286 Jefferson Street
Person Negotiating: Port: Ken Winters, Real Estate Director
*Castagnola's Restaurant: Kathy Higdon & Cindy Foxworth

i. Property: Seawall Lot 322I
Person Negotiating: Port: Ken Winters, Real Estate Director
*San Francisco Parking, Inc.: Timothy Leonadakis
**This Item was taken off the calendar.**

j. Property: 498 Jefferson Street
Person Negotiating: Port: Ken Winters, Real Estate Director
*Franceschi's Restaurant: Paul Capurro

## 10. RECONVENE IN OPEN SESSION

At 7:30 p.m., the Commission withdrew from executive session and reconvened in open session.

ACTION: Commissioner Brandon moved approval to adjourn executive session and reconvene in open session; Commissioner Bierman seconded the motion. All of the Commissioners were in favor.

Commissioner Brandon reported that although the Commission Secretary announced that

Item (f) Pier 48, under Real Estate Negotiations would not be discussed in executive session, the Commission changed their minds and decided to discuss the Pier 48 matter.

ACTION: Commissioner Brandon moved approval to not disclose any information discussed in executive session; Commissioner Bierman seconded the motion. All of the Commissioners were in favor.

## 11. ADJOURNMENT

ACTION: Commissioner Brandon moved approval to adjourn the meeting; Commissioner Hsu seconded the motion. All of the Commissioners were in favor.

The meeting was adjourned at 7:32 p.m.